



HEARING REPORT AND TRANSCRIPT

Hearing Entitled: “Exposing the Proxy Advisory Cartel: How ISS & Glass Lewis Influence Markets”

House Committee on Financial Services

Subcommittee on Capital Markets

April 29, 2025

LXR GROUP, LLC
800 Connecticut Ave, NW. Washington, DC. 20006

Republicans

1. Ann Wagner, Missouri, Subcommittee Chairman
2. French Hill, Full Committee Chairman
3. Frank D. Lucas, Oklahoma
4. Warren Davidson, Ohio
5. Bryan Steil, Wisconsin
6. Lisa McClain, Michigan
7. Troy Downing, Montana
8. Mike Haridopolos, Florida

Democrats

1. Brad Sherman, California, Subcommittee Ranking Member
2. Maxine Waters, California, Full Committee Ranking Member
3. Juan Vargas, California
4. Sean Casten, Illinois

Witnesses

1. [Mr. Charles Crain](#), Managing Vice President, Policy, National Association of Manufacturers, Washington, DC
2. [Ms. Elizabeth Ising](#), Partner, Gibson Dunn, Washington, DC
3. [Mr. Paul Rose](#), Dean, School of Law, Case Western Reserve University, Cleveland, OH
4. [Mr. Paul Washington](#), President & CEO, Society for Corporate Governance, New York, NY
5. [Ms. Nell Minow](#), Vice Chair, Value Edge Advisors, McLean, VA

Legislation

- [H.R. _____](#), a bill to amend the Securities Exchange Act of 1934 to provide for the registration of proxy advisory firms
- [H.R. _____](#), a bill to amend the Securities Exchange Act of 1934 to provide for liability for certain failures to disclose material information or making of material misstatements
- [H.R. _____](#), a bill to amend the Securities Exchange Act of 1934 to require certain disclosures by institutional investment managers in connection with proxy advisory firms
- [H.R. _____](#), a bill to amend the Securities Exchange Act of 1934 to provide for certain requirements related to proxy voting
- [H.R. _____](#), a bill to amend the Securities Exchange Act of 1934 to require the Securities and Exchange Commission to study certain issues with respect to shareholder proposals, proxy advisory firms, and the proxy process
- [H.R. _____](#), the Stopping Proxy Advisor Racketeering Act

Appendix A – [Republican Staff Memo](#) (April 24, 2025)

Appendix B - Democratic Staff Memo (April 25, 2025) – Attachment, P. 46

Appendix C – [French Hill, Ann Wagner letter to SEC Acting Chair Mark Uyeda Re SEC Staff Legal Bulletin No. 14M](#) (March 31, 2025)

SYNOPSIS:

On April 30, 2025, the House Financial Services Subcommittee on Capital Markets held a hearing on the influence of proxy advisory firms ISS and Glass Lewis. Ann Wagner highlighted their 97% market share and potential conflicts of interest, such as ISS rating companies while advising them. Brad Sherman argued that investors should receive the advice they pay for. Charles Crane and Elizabeth Ising emphasized the need for transparency and accountability, citing errors in proxy advisory reports. Paul Washington and Nell Minow supported light-touch regulation to ensure accurate information and prevent conflicts. The discussion also touched on the broader implications for corporate governance and investor rights. The House Financial Services Committee's Subcommittee on Capital Markets held a hearing on the influence of proxy advisory firms ISS and Glass Lewis on American retirement accounts. The firms, owned by German and Canadian entities, were criticized for their lack of transparency and potential conflicts of interest. Witnesses highlighted that these firms make money through consulting services while advising on shareholder votes, potentially influencing outcomes. The SEC's past and current regulatory approaches to these firms were discussed, along with legislative reforms to increase transparency and reduce conflicts. The hearing emphasized the urgency of addressing these issues to safeguard American retirement savings.

- The HFSC seems certain to approve legislation later this year to create a registration regime for proxy firms, increase SEC oversight, enhance company engagement and transparency, and minimize conflicts of interest and errors. The outlook from there is unclear – the Committee posted a number of bills, some of which could just as easily be effectuated by Paul Atkins through regulation. If the House Floor calendar allows space, it is not hard to imagine Republicans bringing the bills to the Floor as part of an anti-ESG themed series of votes at some point down the road.
- The overall outlook for proxy advisor firms is ominous,
- At the hearing, Republicans turned out twice as many members as Democrats, and their members were focused and on-point and on message. Their basic argument was that “politicization of the proxy process continues to place a substantial burden on public companies, drive up unnecessary costs for shareholders, and undermine the broader attractiveness of U.S. public markets. When shareholder proposals are driven by social and political agendas rather than issues directly tied to corporate performance, they erode investor confidence and divert resources away from long-term value creation.” Republicans contend that the two dominant proxy advisory firms - Institutional Shareholder Services (ISS) and Glass Lewis - operate with “unchecked influence, little transparency or accountability,” that “their recommendations are rarely grounded in a substantive analysis of whether a given proposal serves the economic interests of shareholders.” Republicans and their witnesses had 5-6 specific criticisms that they hammered again and again. They clearly expect to work hand in glove with Chair Atkins to impose major limitations on ISS and Glass Lewis.
- By contrast, no Democrat other than Rep. Brad Sherman (D-CA) effectively defended ISS or Glass Lewis. HFSC Full Committee Ranking Member Maxine Waters was visibly apathetic as to the proxy firms, listing a half dozen policy issues she would rather be discussing before grumpily agreeing to “indulge the witnesses with a few questions about the proxy advisory industry.”

TRANSCRIPT:

1. OPENING STATEMENTS

Subcommittee Chair Ann Wagner (R-MO)

The Committee on capital markets will come to order without objection. The chair is authorized to declare a recess of the committee at any time, but will not.

This hearing is titled "[Exposing the Proxy Advisory Cartel: How ISS & Glass Lewis Influence Markets](#)"

All members will have five legislative days within which to submit extraneous materials to the chair for inclusion in the record, I now recognize myself for four minutes for an opening statement. Good afternoon everyone, and I want to thank our witnesses and all those in attendance for joining us for today's hearing on a critical yet under examined issue in our capital markets, the outsized influence and unchecked power of proxy advisory firm firms, particularly institutional shareholders, services ISS and Glass Lewis, the sharing is part of an ongoing effort by this subcommittee to shine a light on how the proxy process is functioning and in many ways failing today's markets.

The purpose of this hearing is to examine the role practices and market influence of proxy advisory firms on corporate governance practices, investor returns and broader market outcomes. We will also use today's hearing to assess transparency, accountability, potential conflicts of interest and the overall impact of proxy advisory firms on the functioning and fairness of capital markets.

Two firms - ISS and Glass Lewis - control 97% of the proxy advisory market. That concentration alone would warrant scrutiny. But more troubling is how their influence goes far beyond research. They now routinely dictate outcomes of shareholder votes. When ISS or Glass Lewis recommends voting against a director, their clients are over 30% more likely to follow suit than non-clients.

Their platforms even pre-populate voting recommendations contributing to what has become known as Robo voting, troubling abdication of fiduciary responsibility.

These firms are not neutral observers. They are for profit businesses that often sell consulting services to the very companies they evaluate, sometimes with key clear conflicts of interest.

ISS, for instance, simultaneously rates and advises companies on its own ESG metrics.

Last year, after ExxonMobil sought judicial relief from an activist campaign that included Glass Lewis as a member. Glass Lewis then recommended that his clients vote against one of the Exxon Mobil's own directors.

Let's be clear, this is not about silencing shareholders. It's about ensuring that the proxy process advances long term investor value, not narrow political agendas.

We've seen a surge in shareholder proposals that are ideological in nature, but marginal in economic relevance.

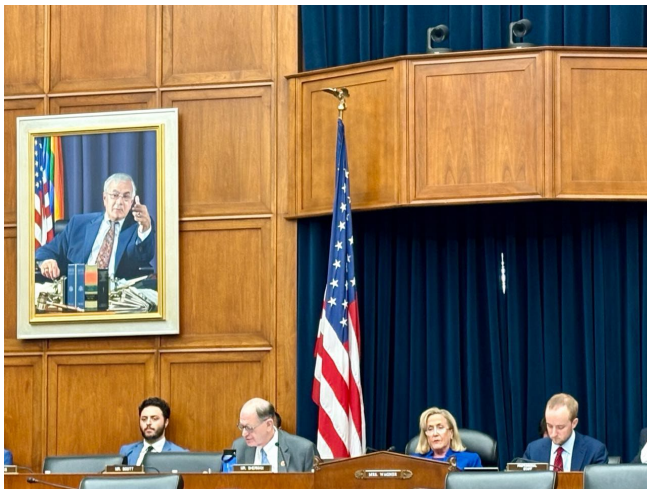
Costs associated with responding to these proposals with both direct and indirect are climbing into the hundreds of millions of dollars annually, and ultimately fall on ordinary investors.

The SEC must re-assert its role in ensuring this system is fair, is transparent and is accountable.

That is why last month, [Chairman Hill and I sent a letter](#) to then Acting SEC Chairman Uyeda, commending the commission for rescinding staff legal bulletin number 14 L, but also urging the SEC to go further by restoring the original intent of rule 14, a dash eight, eliminating the significant policy exception and enhancing oversight of proxy advisory firms. These reforms are critical to safeguarding retail investors, refocusing the proxy process on long term value creation and restoring trust in our capital markets.

Our capital markets work best when participants are guided by economic rationale, not political pressure. And I look forward to a robust and thoughtful discussion today on how we can bring greater accountability to proxy advisors and strengthen the integrity of the shareholder voting process.

The Chair now recognizes the ranking member of the subcommittee, the gentleman from California, Mr. Sherman, for four minutes for his opening statement.



Subcommittee Ranking Member Brad Sherman (D-CA)

These firms have clients who pay them. Those are the investors, the capitalists who make our capitalism work. The question is whether we're going to deprive those who invest, of the advice that they want and that they pay for. There is no barrier to entry to third, fourth or fifth companies getting into this. And as a matter of fact, Vivek Ramaswamy has entered this market, and I can be confident that when he does, he will not be providing woke advice.

The argument here is between Ronald Reagan and Leon Trotsky.

There are those who think that the commanding heights of the economy should be controlled by the party line. And there are others who believe that investors, because it's their money, should actually control what the companies that they own do.

And so we have before us bills that would require that investment advisory firm, that the proxy advisory firms only give advice on what maximizes profit and to tell the Eco investors go to hell.

Well, what does that mean?

That means that if there is a proposal on the ballot that the company get involved in the pornography industry investment advisors will be required by law passed by the Republicans to say, yes, go into that business because it's profitable if you deny the rights of liberals to get advice on how they can invest in companies that don't engage in slave labor in companies that don't ruin the environment, then your own voters must be deprived of investment advice on how to avoid investing in pornography.

Now, since I represent the San Fernando Valley, maybe that's a good district issue for me, but it isn't for you. Investors ought to get the advice they want from the people they select. To get that advice, they should be able to invest in mutual funds that seek to maximize profit or to maximize profit, but no fossil fuels or maximize profit, no pornographic movies instead the most powerful people in the country, those who control the 1000 or so giants on Wall Street, they don't want the investors to control the company. They think a small click of managers should control the company. And how dare anybody who's just a mere owner suggest a change in company policy, let alone demand a vote on it, let alone let people get advice on how to vote.

This is not a war on the in the proxy advisors. This is a war on the idea that the people who whose money it is get to make the decision.

What religious tradition teaches us that anyone with money must exclusively make all their decisions on how to make more money? I think there are some religious traditions that would say, invest your money to help the poor, invest your money to help the plant, maybe even invest your money to promote traditional family values and to instead say no, let management do what they want. Don't and do not allow this is a country with a First Amendment do not allow a anyone to advise you to do the contrary. I don't know why we're having this hearing. I don't know why we're opposing the idea that those with the capital get to control the companies they own, and I certainly don't know why, because I know none of you represent the San Fernando Valley. Why you have a pro pornography agenda here? I yield back.

Subcommittee Chair Ann Wagner (R-MO)

I wish I could use the chairman's minute, but I shall not. Chair recognizes the chairman of the full committee, Mr. Hill, for one minute.

House Financial Services Chairman French Hill (R-Ark)

Thank you, Chair Wagner, thank you for our panel today. I want to appreciate chair Wagner's consistent leadership over many years on examining the proxy advisory firms and their outsized influence over our public markets. Today ISS and Glass Lewis shape the outcomes of share over votes across the market, especially as large index funds often vote in lock step with their recommendations. In my view, that's not just advice. It's intimidating. De facto control. Even more troubling, companies are frequently reporting

factual errors, errors in proxy DOGE, and are rarely given a chance to correct them before votes are cast. We need greater transparency, due process and oversight to ensure that proxy voting remains accountable to the shareholders, not outsourced to this largely unregulated duopoly. I look forward to our discussion today, and I yield back.

Subcommittee Chair Ann Wagner (R-MO)

The chairman yields back. The Chair recognizes the ranking member of the full committee, Ms. Waters for one minute.

House Financial Services Ranking Member Maxine Waters (D-CA)

Thank you very much.

Well, this hearing is titled exposing the proxy advisory cartel, but there is a very real cartel happening right in front of our faces.

Donald J Trump and Associates, the President and his family have made millions of the Trump meme coin to date, and they just even made more with his announcement of a private dinner the top owners of the coin. And that's not all.

The president has pumped the stock of his media company promoted Elon Musk is failing car company on the White House lawn, and is providing his billionaire friends with insider tips to take advantage of the chaos he's causing in the south our committee should be focused on this latest financial corruption.

With that, we ignore it at our peril, and I yield back the balance of my time,

2. ORAL TESTIMONY

Subcommittee Chair Ann Wagner (R-MO)

Today we welcome the testimony of Charles Crane. Mr. Crane is the managing Vice President of Policy at the National Association of Manufacturers. NAM Elizabeth Ising. Ising is a partner at Gibson Dunn and Crutcher LLP. She serves as the firm's co-chair of securities regulation and corporate governance practice. Paul Rose, Professor Rose is a dean and a professor of law at Case, Western Reserve University School of Law. Paul Washington, Mr. Washington is the president and CEO of the Society for corporate governance. He is former deputy general counsel and corporate secretary of Time-Warner, Nell Minow, Ms. Minow is the vice chair of Value Edge Advisors. And she is the former president of ISS. We thank each of you for taking your time to be here today. Each of you will be recognized for five minutes to give an oral presentation of your testimony and without objection, your written statements will be made part of the record.

Mr. Crain, you are now recognized for five minutes for your oral presentation.

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

Thank you. Chair Wagner, Ranking Member Sherman, as well as Chairman Hill and Ranking Member Waters. My name is Charles Crain, as the Chair said, and I'm the Managing vice president of policy for the National Association of Manufacturers.

Proxy advisory firms have had a significant and damaging impact on manufacturers, manufacturing workers and Main Street investors. These firms outsize influence, and their problematic business practices dictate corporate decisions, and they endanger shareholder returns. First and foremost, proxy firms operate with glaring and often undisclosed conflicts of interest. For example, ISS consulting service has been known to use the negative vote recommendations from its proxy voting service as a way to drum up business.

Proxy firms are also unwilling to allow companies to review their draft reports, and they're resistant to conduct the to correcting excuse me, the mistakes and misunderstandings that imbue their final recommendations. And those recommendations are often based on a one size fits all view of how public companies should be run.

In other words, proxy firms, benchmark policies, enforce their beliefs about corporate governance, executive compensation and increasingly, environmental and social topics. Now, despite these obvious laws, proxy firms still control a significant share of investors proxy votes. That means they have significant sway over important corporate decisions.

The SEC under both parties, has investigated these issues over the course of more than a decade, finally adopting a proxy firm rule back in 2020. This subcommittee has played a critically important role as well with hearings and legislation designed to shine a light and ultimately to rein in proxy firms. But despite this clear momentum for reform for both Congress and the SEC, proxy firms remain stubbornly unregulated, to the detriment of public companies and their investors. The SEC is 2020 rule has spent five years hung up in court.

The NAM has had to defend that rule across three separate court cases, one of which in fact has oral arguments scheduled for this coming Friday. This delay is despite the fact that that 2020 rule was a significant compromise as compared to the SEC 2019 proposal. And in fact, manufacturers continue to believe that critical provisions from that 2019 proposal, such as draft review, would be important reforms to adopt today. Proxy firms, of course, would prefer zero SEC or congressional oversight.

ISS is now claiming in court that the SEC lacks the statutory authority to regulate proxy voting advice at all. Now the Exchange Act is actually quite clear that the SEC does have the authority to regulate proxy voting advice, but there may come a time for Congress to reiterate that directive, either to remind a court of Congress's unambiguous statutory intent or to reverse an errant court decision be right, even assuming, though, that the NAM is successful in defending the SEC authority, there is more work still to be done. That's why we appreciate that Congress and members of this committee have offered common sense reforms that would institute much needed guard rails for the proxy these six bills would prioritize Main Street investors retirement security over the proxy firm's agendas.

First Congressman styles bill which would create a comprehensive registration regime for proxy firms. It would increase SEC oversight, company engagement and transparency, while minimizing conflicts of

interest and errors. Mr. Steil also has a separate bill that would ensure that the proxy firms remain subject to anti fraud liability. Congressman Fitzgerald has introduced legislation to ban certain conflicts of interest. Congressman Nunn has a bill that would target Robo voting, which is a common practice that disenfranchises Main Street investors as well as institutional investors and Congressman Loudermill has a bill that would focus on the fiduciary duties of those institutional investors.

Finally, Chair Wagner's legislation would direct the SEC to conduct a comprehensive study of the proxy process, including the damaging role that proxy firms can play.

The time to act on these bills is now awareness of the risks that proxy firms pose is far more widespread than it was back in 2010 when the SEC started looking into this issue, and both Congress and the SEC now have a clear understanding of what must be done policy makers must preserve the SEC's existing authority over proxy firms, while also instituting further guard rails that address the firm's conflicts, their errors, their Robo voting, their one size fits all standards, their ESG agendas and more, manufacturers and Main Street investors are counting on it. Thank you.

Subcommittee Chair Ann Wagner (R-MO)

Thank you, Mr. Crain. Ms. Ising, you are now recognized for five minutes for your oral presentation

Ms. Elizabeth Ising, Partner, Gibson Dunn, Washington, DC 18:12

Thank you for the invitation to testify today. I appreciate the opportunity to share with you my observations on the significant influence of proxy advisory firms and the need to regulate them.

My observations are based on 25 years of practicing as securities and corporate governance lawyer. Proxy advisors play an important role and have considerable influence within the US proxy system.

Shareholders rely on the US proxy system to exercise their corporate voting rights, and public companies rely on it to obtain approval of important corporate governance matters, many of which facilitate capital formation and foster long term shareholder value.

The US proxy system and many of its participants are regulated.

The key exception is proxy advisor models, yet institutional shareholder services and Glass Lewis, the two major firms, exercise significant influence over voting on 1000s of proxy proposals every year, and lack fiduciary duties to consider what is in the best interest of companies and their shareholders.

I want to highlight several concerns that demonstrate the need to subject proxy advisors to reasonable common-sense regulation.

First, the consulting services offered by the proxy advisory firms call into question the objectivity and reliability of their recommendation.

ISS and Glass Lewis sell advisory service to public companies regarding matters in which (garbled) that are available update to their consultants.

Notably booked Contractors offer consulting services to companies as you even Glass Lewis, these services proxy advisors also benefit from other products.

The number of proxy proposals has increased approximately 700,000 companies since 2000 more proposals mean that investors large portfolios need more support proxy advisors. Yet it is these firms that are encouraging additional proposals.

For by example, encouraging annual "Say on Pay" vote, even though the Dodd Frank Act requires those votes only every three years next, there are significant concerns about errors and proxy advisor reports and often on public companies scrambled to correct the record, since they cannot preview these firm's analysis.

For example, one company's Glass Lewis report stated that the Board did not oversee cybersecurity risk. The company pointed Glass Lewis to their SEC filing with a section titled "Oversight of Cybersecurity," but Glass Lewis did not revise its report.

For these reasons, proxy advisors should face potential liability for making materially false or misleading statements.

Proxy advisor firms also encourage Robo voting, which is when an investor follows a firm's voting recommendations without independently assessing it.

Proxy advisors may say that they are just implementing their client's voting guidelines, but that does not explain certain investors repeatedly voting lock step with the firms are saying that they cannot override those firms recommendations.

In addition to the firm's voting guidelines, include numerous case-by-case policies where voting recommendations are not based on objective standards, making it important for the firm's clients to understand the underlying rational of those recommendations, and yet, there's often a flood of votes that mirror each firm's recommendations that come in almost immediately after their release.

Another concern is that proxy advisory firms voting policies are based on unfounded biases and presumptions.

For example, both proxy advisors generally opposed super majority voting funds because, in the words of Glass Lewis, they quote, can enable a small group of shareholders to overrule the will of majority shareholders.

And yet, each proxy advisory firm has so called board accountability policies that expect companies to achieve super majority approval on "say on pay" proposals, and Glass Lewis expects board responsiveness unless a company receives a super majority vote against the shareholder proposal.

These policies enable small groups of shareholders to drive major changes at public companies, even though a majority of shares voted in support of existing practices.

As a result ISS and Glass Lewis push public companies to expend resource resources to support actions not supported by the majority. ISS and classes also essentially act as regulators, by way of example, unlike the New York Stock Exchange and NASDAQ and who have developed director independent

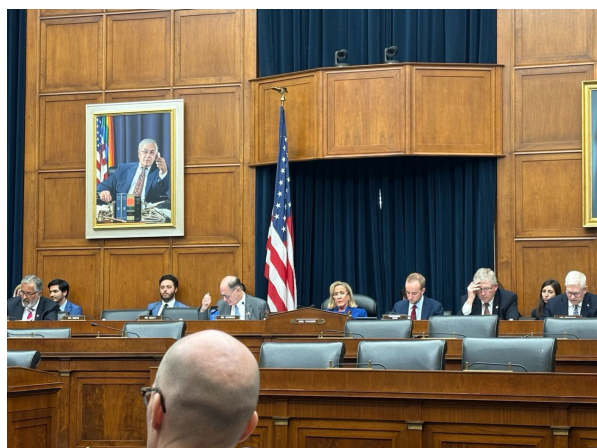
standards, ISS considers a director to not be independent if a director of an employee is an employee of an organization that provides the company just over \$10,000 in consulting services.

Interestingly, ISS would fail its very own independence test at companies where it provides both consulting services and issues voting recommendations.

Finally, proxy advisors make materiality determinations without a cost benefit analysis and often without considering the company's circumstances.

For example, Glass Lewis recently stated that measures related to human capital management are financially material for all companies under the SEC is well developed legal standards for materiality. That is not accurate.

In conclusion, proxy advisory firms directly impact proxy voting decisions and voting outcomes, and thus Congress and the SEC should adopt common sense regulation of these firms to protect the integrity of the US proxy system and capital markets. Thank you for inviting me to testify.



Subcommittee Chair Ann Wagner (R-MO)

Thank you, Miss Ising, now, Mr. - or, professor, I should say, Rose, you are now recognized for five minutes for your oral presentation.

Mr. Paul Rose, Dean, School of Law, Case Western Reserve University, Cleveland, OH

Thanks, Chair Wagner, and members of the committee, for the opportunity to testify on an issue that I've been studying for over 20 years.

The concentrated and largely unregulated our proxy advisory firms in US capital markets, proxy advisor recommendations can swing vote outcomes and shape corporate governance, yet they operate without fiduciary obligations, with limited transparency and minimal accountability.

Today, two firms - ISS and Glass Lewis - dominate over 90% of the proxy advisor market. Importantly, this dominance is not a natural result of investor demand.

It is in large part a by product of regulatory design, specifically the SEC is adoption of rule 20646, under the investment Advisors act of 1940 this rule adopted in 2003 required investment advisors to adopt proxy voting policies and procedures and devote client securities in their best interest.

The SEC then issued no action letter suggesting that advisors could fulfill these duties by relying on independent third party proxy advisors. By the time the SEC [withdrew these letters in 2018](#) the proxy advisory industry had grown significantly. Rule 206(4)-6, transformed an internal fiduciary duty into an internal/external compliance function fueling the growth of ISS and Glass Lewis into de facto gatekeepers. Many institutional investors now outsource their voting decisions to these firms.

Some of these investors now engage in Robo voting, mechanically following proxy advisors recommendations without independent analysis.

In 2020, over 100 institutions, institutional investors managing a combined 5 trillion voted in near total alignment with ISS or Glass Lewis. Robo voting may be attractive from a cost efficiency standpoint, but it compromises fiduciary responsibilities, it removes independent judgment from governance decisions and reduces diversity in shareholder viewpoints.

Structural conflicts of interest further complicate the role of proxy advisors.

ISS not only provides recommendations, but sells governance consulting services to the very companies it evaluates.

This dual role represents a fundamental conflict.

How can a firm offer objective assessments while advising those same issuers?

We typically do not allow such conflicts in financial services. Auditors, for example, have long been prohibited from conflicting activities under Sarbanes Oxley, market concentration exacerbates the problem with only two dominant firms.

Companies have little recourse if they disagree with recommendations, the market lacks meaningful competition, making transparency all the more essential.

Proxy advisors often promote uniform governance practices across industries, ignoring the unique needs of individual firms.

A one size fits all approach may penalize innovative or long term strategies. Very little evidence supports the idea that proxy advisors specific governance recommendations include returns or help companies avoid scandal.

In 2020 [the SEC adopted reforms requiring proxy advisors to disclose conflicts of interest](#), allow issuers to review proxy advice, perform meetings and reaffirm that proxy advice constitutes a solicitation under federal securities laws, these reforms were carefully developed over a decade across two administrations to promote transparency and fairness.

Yet in 2021 the SEC suspended enforcement and announced plans to revise the rule before full implementation.

In my view, this regulatory whiplash creates uncertainty. It signals that public input can be ignored, and it erodes trust in the commission. Again, I wish to stress that the modern proxy advisory industry has not grown out of market innovation, but instead out of regulatory incentives. Even if proxy advisors perform a useful function.

Why should we not hold them to fiduciary standards and protect investors against conflicts of interest, as we do for other major market actors, by imposing accountability and oversight, Congress can ensure proxy advisors serve as responsible facilitators of informed shareholder participation, rather than unregulated gate keepers of corporate governments. Thank you.

Subcommittee Chair Ann Wagner (R-MO)

Thank you, Professor Rose, Mr. Washington, you are now recognized for five minutes for your oral presentation.

Mr. Paul Washington, President & CEO, Society for Corporate Governance, New York, NY

Good afternoon. Chair Wagner, Ranking Member, Sherman, members of the subcommittee. My name is Paul Washington. I'm president and CEO of the Society for corporate governance.

The society is a non partisan, non profit organization of governance professionals who serve approximately 1000 public and private companies almost every size and industry across our country.

We advocate for policies that promote effective governance, appropriate disclosure, capital formation, and we appreciate the opportunity to present our views on proxy advisory firms today. Proxy advisory firms play an influential role in capital markets by advising investors on how they should vote, as indicated in numerous studies submitted in our written testimony, the firm's impact is two fold.

First, they can determine the outcome of votes where shareholders have decision making power.

Second, even when shareholder votes are merely advisory, as is the case with companies, "say, on pay proposals," or many shareholder proposals, they often affect board decision making in addition to providing voting recommendations to investors.

The proxy advisory firms also own and control software platforms that send votes by investors to the tabulators for shareholder meetings.

In some cases, the advisory firms decide how to vote and submit the balance for their clients, and they offer, as has been mentioned, other services to investors and corporate clients.

Importantly, the influence of proxy advisory firms is likely only a number of large US asset managers are implementing programs that will allow their upstream clients to decide how to vote their shares, rather than having the asset manager make that determination.

In some cases, the voting options provided to those upstream clients based on the proxy advisory firm's own policies or recommendations, thereby effectively increasing the firms. Society supports what we term light touch regulation of the proxy advisory firms institutional investors cast votes on 10s of 1000s of items each year, and the society fully supports investors ability to enlist outside assistance in deciding how to vote and cast in votes. At the same time, we believe regulation can first help ensure that shareholders are provided with accurate information votes, and second, increased transparency regarding proxy advisory firms, enhancing confidence in the system.

Let me address four areas of reform. First, as a threshold matter, legislation may be needed to address the SEC 's jurisdiction.

For many years, as you know, the SEC has considered the activities of proxy advisory firms to be within the scope of proxy solicitation.

As you know, ISS harms the SEC interpretation and the lawsuit in federal district court, which is on appeal to the DC Circuit, if ISS prevails and it is determined that the SEC lacks authority to regulate proxy advisory firms, Congress could move quickly to enact legislation to confirm the SEC authority.

Second and quite important, the society supports requiring proxy advisory firms to provide advanced copies of their reports to companies on a complimentary basis, with a reasonable amount of time for companies to identify any factual, analytical or other errors. In addition, proxy advisors should provide clients with a hyperlink to the company's response to the advisory firm's analysis of recommendations.

Given the more than 25,000 ballot items on Russell, 3000 companies each year, it is inevitable that proxy advisory firms will have some factual errors. Numerous studies confirm that these errors occur.

An advanced review and comment process would permit a company to review and correct any factual inaccurate information. This practice would also be consistent with ISS prior practice in the US, its current practice outside the US and the SEC, 2019, proposed rule Next, we support increased exposure of the empirical basis for proxy advisory firms voting policies. This is critical, because institutional investors with fiduciary duties to their shareholder clients, rely to varying degrees on proxy advisory recommendations.

And second, as more retail investors participate in client directed voting programs in which their votes follow proxy advisor recommendations, those retail investors should know whether to what extent the recommendations have been solid empirical Foundation.

We also believe that proxy advisor firms should, at a minimum, provide increased information regarding actual or potential conflicts of interest that arise from their multiple roles. And finally, the society also supports the regulation of automated voting, sometimes called Robo voting. This automated voting outsourcing is a particular concern because, as noted above, the proxy advisory voting policies may not have an empirical basis. We appreciate the legislation that the subcommittee is considering, and we stand ready to work with you as you refine the legislation.

Thank you very much for the opportunity for you this afternoon.

Subcommittee Chair Ann Wagner (R-MO)

Thank you, Mr. Washington. Ms Minow, you are now recognized for five minutes for your oral presentation.

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA 33:39

Thank you, Madam Chairman and members of the committee. I'm Graduate University of Chicago, which taught me a lot about free markets. And I'm the founder or co founder, of five startups, three which have been sold, and we've created hundreds of jobs. I'm here on behalf of the people.

Capitalism is named after the capitalist, the providers of capital, and on behalf of the shareholders.

I worked in the antitrust division of the Justice Department during the Reagan administration, so I'm aware that the elements of a cartel are collusion on pricing and imposing barriers to entry on the market for competitors. Neither of those are present here, and that is why I'm using the word cartel in quote marks, because it just doesn't apply at all.

As for entering the market, there have been some that have, that have tried and failed.

There was a really good one started by a former SEC Commissioner, but nobody bought the product because it was funded by the business round table and they were suspicious of it.

There have been a couple in the last couple of years, as Mr. Sherman said, that sell themselves as the anti Luke. There are also proxy advisors outside the United States that cover US companies and make their services available. I could start a new one tomorrow, but if you impose new rules, if you impose new restrictions, you are making it harder for new people to enter this business and compete with ISS and Glass Lewis.

Proxy advisory services are purchased exclusively and voluntarily by the most sophisticated financial professionals in the world. Almost all of them also fiduciaries and subject to the strictest legal standard that has ever been developed. No one has to purchase their services.

No one has to follow their advice. If indeed they are as influential as the snowflakes over here are saying, then they should be popping champagne corks, because over 90% of the recommendations of the proxy Advisor Services are to vote as management recommends.

I don't know anybody who understands voting better than the members of this committee and the members of this house. You would be overjoyed to get 96% of the vote, which is what the unopposed directors get when ISS recommends a vote in favor on the 4% where ISS parts from the recommendations of management, the data show very clearly that the fiduciary financial professionals read the analysis and make their own decisions. In my opinion, the single most outrageous item it has ever been on a proxy is the \$58 billion pay package for Elon Musk at Tesla ISS recommended a vote against. It got a strong majority vote in favor.

I have a lot of data in my submission about the number of votes that go contrary they've cast by clients of the proxy advisors that go contrary to their recommendations, as well as data about the different recommendations that ISS and Glass Lewis camp showing again that there's no collusion, and many people do subscribe to both. Despite prox advisory for recommendations, the clients often vote in favor or vote against. The share list of Tesla also voted in favor of the move from Delaware to Texas, which I thought was wrong. ISS supported it, and it got an enormous majority. This is a kill the messenger

approach. You have got the absolute ultimate example of the free market. Here, the reason the proxy advisory services started, and I was there when they did, and I helped to start one, is that there was documentation that investment managers were voting incorrectly when it came to shareholder votes.

They were voting yes when they should have voted no, because the companies were clients or were prospective clients. And Jack Bogle, the founder of Vanguard, wrote several books about that subject, the independent proxy advisors were invented, were asked for, became a part of the market to avoid those inherent conflicts of interest. I'm sure that advocates who are paid by corporate insiders have valuable comments, but I think it would be useful for this committee to hear from the institutional investors that use these services, so that you can understand why they buy them, how they use them and when they vote with and against them.

3. QUESTIONING OF WITNESSES

Subcommittee Chair Ann Wagner (R-MO)

Thank you. Miss Minow. Before turning to member questions, I want to remind everyone involved in this hearing, both members and witnesses, to adhere to proper decorum in every way, shape and manner, and I will impose that I now recognize myself for five minutes for questions.

Mr. Washington, as a former corporate secretary of a public company, you played a key role in navigating the firm throughout the shareholder proposal process during proxy season.

Can you discuss the impact that a proxy advisory firm's recommendations has on a shareholders proposal?

Mr. Paul Washington, President & CEO, Society for Corporate Governance, New York, NY

Certainly, it has a quite significant impact. This is more recent, but the Society for corporate governance is put forth in the written testimony found that in the last proxy season, there's a 36 point difference in shareholder support for a proposal that is endorsed by Eisen Glass Lewis versus when it's not that's 42.4% in favor, versus 6.6% so a dramatic impact when the advisory firms are in favor of a shareholder proposal that has a knock on effect within the board room, it affects corporate decision making as to whether you will take a particular action or not, because it factors into the calculus of what would this do for The company's reputation.

What might it do for the associated controversy, if you did not follow the sharehold,

Subcommittee Chair Ann Wagner (R-MO)

Then you would of weight? Very significant amount of weight.

Mr. Paul Washington, President & CEO, Society for Corporate Governance, New York, NY 40:35

Yes.

Subcommittee Chair Ann Wagner (R-MO)

Ms. Ising and Mr. Washington. How have proxy advisors materially impacted corporate behavior over the last 10 years. Please miss Ising,

Ms. Elizabeth Ising, Partner, Gibson Dunn, Washington, DC 40:52

I think there are three key impacts that I would highlight.

The first is and is the costs which are definitely passed on to shareholders. Companies are obviously operating, running their business and trying to maximize shareholder value, but they also have to spend significant resources rethinking what they've determined is in the best interest of the company and shareholders, given the proxy advisory firm's expectations and the consulting fees that need to be paid for the advisory services.

It also takes management and board time to address these issues.

And, frankly, the proxy advisory firms have contributed to the number of shareholder proposals that we see in proxy statements, and that's that fueling that rise has also read led to the use of more corporate resources to address that

Subcommittee Chair Ann Wagner (R-MO) 41:40

Mr. Washington. How has it impacted corporate behavior proxy advisors over the last 10 years?

Mr. Paul Washington, President & CEO, Society for Corporate Governance, New York, NY

It affects the way it would if you had a major shareholder who actually didn't actually have a stake in your company. That's essentially what we're doing. It's not like having an extra director in your board room who would have to abide by fiduciary duties. Nor is it like having a regular shareholder who cares about the long-term financial wellbeing of the organization.

It's like having a major shareholder or a couple major shareholders who may have other interests play here and other conflicts, including some conflicts,

Subcommittee Chair Ann Wagner (R-MO)

Professor Rose, there has been widespread criticism of proxy recommendations that lack of basis in fact or prioritization activist agendas over shareholders interests. How can we ensure that proxy advisors are acting in the best interest, that best interest to shareholders.

Mr. Paul Rose, Dean, School of Law, Case Western Reserve University, Cleveland, OH

I think that the legislation, the draft legislation that we've seen, especially Congressman Steils', bill, would really go to the heart of that issue. It would impose greater transparency into methodologies. It would provide disclosure of conflicts of interest, and it would impose liability for misleading statements. And I think all of those...

Subcommittee Chair Ann Wagner (R-MO)

Liability, good,

Mr. Paul Rose, Dean, School of Law, Case Western Reserve University, Cleveland, OH

yeah, and I think all of those things could help ensure that

Subcommittee Chair Ann Wagner (R-MO)

Mr. Crain, Nam challenged the Biden SEC decision to suspend enforcement of the 2020 proxy rule. You mentioned it briefly and its latter rescission of parts of the rule. Can you describe how the SEC under former chair Gensler created more uncertainty surrounding the proxy advisory and industry?

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

Absolutely. So, the 2020 rule, as it's been mentioned, was developed over the course of a decade, and it really included many bipartisan ideas. Unfortunately, under Chairman Gensler leadership, they suspended unlawfully as a court held, and then rescinded again unlawfully as a court held.

That rule creating a significant pendulum effect that the market is currently feeling and we're still litigating this issue. There are oral arguments on Friday about whether the SEC has the authority to regulate these firms at all manufacturers say that they do. ISS says that they don't.

Subcommittee Chair Ann Wagner (R-MO)

Thank you very much. I mean, the Chair now recognizes ranking member of the subcommittee, Mr. Sherman, for five minutes for questions

Subcommittee Ranking Member Brad Sherman (D-CA)

The loudest and most persuasive testimony is the testimony that has not been spoken.

CalPERS is not here complaining. The institutional investors are not here complaining.

The owners of capital in our society are not complaining.

The complaints are coming by those who represent corporate America, who do not want the owners of corporate America to tell the managers of corporate America what to do, because they're just the owners. Now, low cost investing is the rage. Now you want to minimize your costs, and these these proxy advisors cost money. Would it be legal?

Ms. Minow, to just have a mutual fund that says we always vote with management. Makes it simple. We spend 0.0 pennies, figure out what to do. Is that legal?

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA

That is legal,

Subcommittee Ranking Member Brad Sherman (D-CA)

or we always vote against management?

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA

That's legal too. That is also legal

Subcommittee Ranking Member Brad Sherman (D-CA)

Okay, so you don't have to pay for this advice if you don't want it. And in fact, you could offer investors a lower administrative cost if you just or you could also, you could also have a proxy, a mutual fund, that's policy was we just never vote, or we always just count our votes toward a quorum, but otherwise don't vote.

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA

They would have to make a case that that was consistent with their obligation as fiduciaries. But if they were small enough, I could do it.

Subcommittee Ranking Member Brad Sherman (D-CA)

So you'd have to be small to do that, whereas always voting with management a big, big one could do that.

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA

They Well, if they disclosed it, so that

Subcommittee Ranking Member Brad Sherman (D-CA)

We save money by not thinking, that's what they wanted. Index investing, that's the slogan. "We save money by not thinking." So why not carry it one step further and apply that to this?

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA

Sure.

Subcommittee Ranking Member Brad Sherman (D-CA)

I mean, if you're not going to spend a penny figuring out what stock to buy. Why should you spend a penny finger on how to vote on the damn proxy statement?

So we're being told that there are errors.

Now the SEC investor Advisory Committee reported proxy advice contained errors at the rate of 0.3% of the and none of those errors were shown to be material.

Proxy advisors are, of course, private companies their clients expected it to be accurate.

Ms. Minow, what is the argument for supporting more federal regulation of advisors on act to promote accuracy when they review shows no material misstatements of fact?

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA 47:12

Proxy advisors are publishers of reports, just like newspapers that give restaurant reviews.

Subcommittee Ranking Member Brad Sherman (D-CA)

if I could retire from Congress.

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA

Absolutely, there's no possible justification for that regulation.

Subcommittee Ranking Member Brad Sherman (D-CA)

Okay, is there any organization, can we close the door back there? It's creating the clock. Please.

Subcommittee Chair Ann Wagner (R-MO)

Apologies, I believe that the gentleman had a minute 30 left in his time he may resume.

Subcommittee Ranking Member Brad Sherman (D-CA)

if an investor wanted to invest in a mutual fund that was dedicated to moving us away from fossil fuel, how could that fund vote those values without getting any advice? Would that work?

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA

Exactly as I said, the proxy advisors came of age in the 1980s to prevent the conflicts of interest that the investment managers were facing.



Subcommittee Ranking Member Brad Sherman (D-CA)

Okay? And what if you wanted a fund that invested in traditional values now and then? As I posited the idea that there might be a question before a corporation as to whether to get involved in the pornography business. They said he can make money in that if we had investment advisor, if the proxy advisors were required to give advice consistent with maximizing profits, would they then have to advise a traditional values fund to vote "yes" on pornography?

Ms. Nell Minow, Vice Chair, Value Edge Advisors, McLean, VA

They're happy to do it. They're in business, Ranking Member Sherman. And if you come to them and say, "I would like you develop proxy voting policies, or vote my proxies for me according to whatever policy you want."

Subcommittee Ranking Member Brad Sherman (D-CA)

So, if you pay them to tell you how to vote traditional values, they will, unless Congress prohibits such advice as has been proposed by some of my Republican colleagues. I yield back.

Subcommittee Chair Ann Wagner (R-MO)

The chair now recognizes the gentleman from Arkansas, the chair of the full Committee on Financial Services, Mr. Hill, for five minutes

House Financial Services Chairman French Hill (R-Ark) 49:58

I thank the Chair,
Mr. Crain, good to have you with us, and I was thinking about your members and just curious, when they design their corporate policies and compensation programs through the views and the policies and the likely recommendations of the proxy advisory firms influence that?

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

They absolutely do, the manufacturers.



House Financial Services Chairman French Hill (R-Ark)

Wow, that's amazing. Is that that seems like that's just way outside the scope of the business judgment rule, and fact that we have all these rules in state law about having independent boards and directors that are responsible for all that, but you're saying there's this is, you would you describe this as an outsized influence over the board?

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

I absolutely would, and I think it was,

House Financial Services Chairman French Hill (R-Ark)

Why is it more outsized than, you know, some successful money manager, CalPERS. This CalPERS, it's a powerful money manager out there in California. Do they rely on? ISS just about to tell them what to do, even though they're one of the biggest in the country?

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

My understanding, I'm not an expert on their specific relationships, but I do believe they rely on the proxy firms to some extent. I think your point is well taken, though, that proxy firms, uniquely, are unregulated in this space. If you think about the large institutional investors, if you think about the exchanges, if you think about the publicly traded companies who are operating America's capital markets, everybody is a participant in the capital markets, and they have some appropriate degree of regulation, and we can all agree or disagree with exactly what that appropriate degree is for proxy firms, don't they're unregulated, and that's an issue despite their influence.

House Financial Services Chairman French Hill (R-Ark)

Yeah, and I appreciate what my friend Nell Minow said about when she started her company was in the dark ages, right?

So back in 1992 you're reflecting on the 1980s LBO craze, leveraged buy out craze, two classes of stock, staggered directors, no independent directors, no independent compensation committee, no separate Chairman from a CEO, right?

Those were top issues that would you agree among many others, but those were top issues?

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA 52:29

Those were definitely got top issues at that time.

House Financial Services Chairman French Hill (R-Ark) 52:30

Okay, so. But since 2000 the implementation of Sarbanes Oxley, where we have all this micro management of influence between investment bankers, Investment Research owners, owner disclosure, it's a different world. Wouldn't you say that today's capital markets are different than 1992?

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA 52:51

I have kind of a Dickensian "best of times, worst of times" assessment of that. We certainly are doing much better with regard to independent directors and the number of boards that they serve on, a lot of big improvements, and Sarbanes Oxley, it was a huge impact on that.

However, some things are worse, and to the extent that they are better, legislation played an important role, but so did the shareholder feedback.

House Financial Services Chairman French Hill (R-Ark) 53:18

Yeah, well, I'm for shareholder feedback. I was in 1992 when you and I met each other, and I'm for it.

Now, the problem is we have, like, fewer public companies. Now. Public companies aren't going public because of the cost and litigation around this kind of stuff. And, you know, I credit the success of this industry to Harvey Pit, and the no action letter in 2003 nobody. This is a self-created, self-fulfilling prophecy set of organizations due to that no action letter, which basically said, if you use one of these folks, you're off the hook to Brad Sherman's comments that he just made about me.

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA

But that's been rescinded,

House Financial Services Chairman French Hill (R-Ark)

yeah, well, but it was still the origin of how this business grew. In my opinion. Do you agree with that?

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA

I would think that my origin story goes back to the Labor Department and their letter in 1988 for ERISA fiduciaries.

House Financial Services Chairman French Hill (R-Ark)

Right. Yeah, well, I mean, I think we've taken care of that, where they're doing a good job on that. So I want to turn and ask Miss Ising, from your experience, how influential the proxy, advising firm and voting outcomes?

Ms. Elizabeth Ising, Partner, Gibson Dunn, Washington, DC

They're very influential, but obviously it depends on the specific company at issue.

But we've seen studies that show, for example, on say on pay, it can be upwards of a 40% difference the and what the way we often will also see that that influence show up is not just in the vote totals, but also in the dramatic impact that happens once the the left hand issues the voting recommendations and the right hand cast the votes swiftly.

House Financial Services Chairman French Hill (R-Ark)

Thank you. I appreciate that. Yield back to the chair.

Subcommittee Chair Ann Wagner (R-MO)

Gentlemen. Yields back The Chair recognizes a gentleman from California, the ranking member of the full Committee on Financial Services. Ms. Waters for five minutes.

House Financial Services Ranking Member Maxine Waters (D-CA)

Thank you very much, Madam Chair.

As I stated in my opening remarks, I firmly believe that President Trump's ongoing effort to line his and his family and his friends pockets is an illegal and despicable attempt to use the office of the president for personal gain, and I think it's deserving of this committee's immediate attention.

Nevertheless, I will indulge the witnesses with a few questions about the proxy advisory industry.

For those listening at home, proxy advisors are independent research firms that help asset managers and ordinary investors alike to better understand the numerous proposals they must vote upon at the annual meetings that the companies they're invested in.

Critics of proxy advisors often claim they have too much power over corporate governance, and often accuse them of recommending votes that are contrary to what corporate management wants.

I want to ask a question of you. Ms. Minow, as you point out in your testimony, however, ISS recommended a vote with management on a woman 96% of property proposals in 2024 and those proposals went on to receive 90% 96% of the vote. Almost all of those proposals were recommendation to vote in favor of unopposed board candidates, auditor approvals and other routine matters, sounds to me like management words of an all powerful "proxy advisory cartel" are overblown.

My goal so far as to say that proxy advisors are to align with corporate management.

Can you talk a little bit more about the role of proxy advisors and whether silencing them, like some of the bills posted for this hearing would do, would benefit the advisor?

I'd like to hear from you, but I tell you the truth, If you were talking about tariffs, if you were talking about Social Security, if you were talking about Medicaid, if you were talking about the issues that are really confronting us at this time, the president who is leading this country in a terrible direction, I'd be more interested. But this is my duty. I'm gonna sit here and listen to all about these powerful proxy advisors.

Please go right ahead.



Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA 57:38

Thank you, Representative Waters, and I hope we can have that other conversation sometime too. Yeah, proxy advisors, as I said, they are in business. If you come to them and say, I would like you to vote proxies for me. And here are my policies. I for example, there are a number of extremist right wing proposals that are appearing this year on on proxy, but I want to vote all in favor of those and against all of the ones that are coming from the nones and the public interest groups. They will be happy to vote your proxies exactly as you say. But what they do is they provide a lot of research, and if you'll permit me, I would like to give to add to the record two examples of ISS proxy advisory reports, which I think should be a part of the record, because you'll see, quite honestly, they go into great quantitative detail and their evaluation, and they say, and this is what management says, and this is what we say, and this is what somebody else says, and I think They would really enhance the record of this hearing,

House Financial Services Ranking Member Maxine Waters (D-CA)

I ask permission to enter into the record a recent report from ICCR, are the sustainable investment forum and the shareholders rights group on shareholder proposal.

We have a little bit more time you have know anything about tariffs.

I mean, you know, Wall Street is telling us that there's so much uncertainty, they don't know what this President is going to do from day to day. He really doesn't know anything about tariffs. But anyhow, I think he was trying to improve or the tariffs on a little island called Lesotho in Africa, I think it have no people on the island, what have you.

But to tell you the truth, I just wish that this committee would take up some serious issues. We're going to have a markup on Wednesday. I want everybody to pay attention. I got something for Okay, okay, sure. You don't know anything about tariffs. Oh, that's okay. These big old, important proxy advisors, that's what we hear about today. They have so much power. Gotta do something about them. Let these what are they doing? Telling the wrong people the right thing or the right people the wrong thing. We don't know, and frankly, I don't care, but I got to do this. You know, as a ranking member, I have to pretend, but I tell you, sit in with us tomorrow. Listen to us. What's going to happen on the markup.

Okay, I yield back my time, and I'm glad to do it.

Subcommittee Chair Ann Wagner (R-MO)

Thank you. Chair now recognizes the gentleman from Oklahoma, the chair of the task force on monetary policy, Treasury, market resilience and economic prosperity. Mr. Lucas for five minutes,

Rep. Frank Lucas (R-Ok)

Thank you Chair, and thank you to our witnesses for testifying today. And I too, look forward to hours and hours and hours and hours and hours of good insight storm.

But for the moment, let's turn to the perspective.

Last week, Paul Atkins was sworn in as the 34th chairman of the SEC and this is certainly a welcome change, as the previous chairman had pursued an aggressive rulemaking agenda and doing much of the progress made under the first Trump Administration.

For example, many of the reforms implemented under chair Clayton, intended to increase transparency and proxy advisory industry were rolled back for when unenforced under Chairman Gensler.

Ms. Ising. What would you suggest to the new chairman as the first order of business in improving the misguided regulations of the past? First order of business? What would you tell the new chairman?

Ms. Elizabeth Ising, Partner, Gibson Dunn, Washington, DC

The first order of business with respect to proxy advisors is restoring the common first, making sure and continuing the grounded view that proxies advisors are in unification solicitations, bringing back the 2020, rules, which, as Charles mentioned, are very much a reasonable approach, and continuing to focus on the need for transparency, for fairness and predictability, on how these firms operate.

Rep. Frank Lucas (R-Ok)

Mr. Crain, there are a number of positive steps that the SEC can take with this existing party. But now turning to Congress, what statutory changes should this committee be looking at so that public companies are not burdened by regulatory whiplash that you talk about in your written testimony?

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC 1:02:11

So the first court.

Rep. Frank Lucas (R-Ok)

Mr. Washington, my bill, the public company Advisory Committee Act, would provide public companies opportunity to engage with the SEC on a range of regulatory issues, including the ones discussed today. Can you speak more to why the SEC would benefit from establishing a public company Advisory Committee?

Mr. Paul Washington, President & CEO, Society for Corporate Governance, New York, NY

Delighted to do so, and thank you for this palate cleansing bipartisan moment, because we think this is an issue that both sides of the aisle can embrace.

The SEC has a number of advisory committees, including one for investors.

They don't have one for issuers.

And we think that having a group of issuers, large comp, not small and mid cap companies, can get together and advise the SEC in advance of proposing rules, rescinding rules, revising rules, will dramatically streamline the regulatory process, improve decision making and reduce the burdens on investors, issuers and the government alike.

So we really hope this is your legislation, and we appreciate your leadership on it is something that can be embraced on both sides of the aisle and can move forward.

Rep. Frank Lucas, R-Oklahoma

Madam Chair, before I yield back, I would note I'm looking forward to quality bonding time with all my friends tomorrow, and with that, I yield back.

Subcommittee Chair Ann Wagner (R-MO)

It'll be a spectacle, that's for sure. The gentleman yields back the chair. Now recognizes a gentleman from California, Mr. Vargas, for five minutes.

Rep. Juan Vargas (D-CA)

Thank you very much, Madam Chair, and thank you for holding this hearing there's nothing like bonding. Looking forward to it. Nothing like bonding. Fabulous.

Now, I tried to research your backgrounds, and you have stellar backgrounds, obviously, and I believe that for the five of you are attorneys, Ukraine, I believe you're an attorney. Is that correct? That's correct, but, well, I believe the four of you are is that correct, or Am I incorrect about that?

You are great. Okay, and Mr. Washington, you've mentioned conflict of interest a couple times here, and I think that's very important. So we've been reading about the President's cryptocurrency and its means. Is there potential here for a conflict of interest? And wouldn't an investor want to know some information? Well, you're an attorney for us. Could you tell me, is there a possibility for a conflict of interest here? We heard from the New York Times that in American history, we've never seen so much intertwining between public policy and a president's personal fortune.

Is there a potential here for conflict. I would advise you before that, remember what Lisa Murkowski said? No, I think she said that they fear retribution from the president if they speak freely. So go ahead.



Mr. Paul Washington, President & CEO, Society for Corporate Governance, New York, NY

Yeah, there are different rules that apply in determining whether it's a conflict of interest in the political sphere, in the legal sphere and in the corporate sphere, I feel qualified to talk about the conflicts of interest that exist in the legal sphere and the corporate sphere, but not in the political sphere. Respectfully.

Rep. Juan Vargas (D-CA)

Would anyone else like to try?

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA

Thank you very much. Before I went into ISS, I was in the government, and for a while I was an ethics counselor in the government, and I can tell you it is a per se conflict of interest.

Rep. Juan Vargas (D-CA)

Why is it a per se conflict of interest?

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA 1:06:37

The President, like the other people in government, is supposed to have one interest, and that is, that is what he's for, to benefit, to uphold the Constitution and to benefit all Americans. And when he sells access to have dinner with him, when he sells products and gives better attention to the people who buy those products that is not just a perceived conflict, but an actual conflict.

Rep. Juan Vargas (D-CA)

But who's going to police it? Then, from the federal government?

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA

I think it's probably Congress, sir

Rep. Juan Vargas (D-CA)

Congress, not the CFPB, not any other institution that we have?

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA

and the press.

Rep. Juan Vargas (D-CA)

It wouldn't be anybody else. I mean, don't you want if you're an individual and you know, investor, retail investor or an institutional investor, wouldn't you want information on this? Wouldn't you want to have some advice?

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA

The President only once tried to have a public company with outside shareholders, and he learned very quickly that he was not happy about that. So I don't know who is, who his other shareholders are, but they're probably just family.

Rep. Juan Vargas (D-CA)

I bring this up for two reasons.

One, I mean, obviously you want advice. I mean, if you're the if you're going to invest in a company, you're the investor, you're the owner of that company, ultimately, you want advice. That's why I think proxy advisors are so important. You want advice, whether it's the nuns or whether it's Opus Dei, it doesn't matter. I mean, they have two very I'm Catholic, I can tell you, they're very different views. But they want advice. But you also want to make sure that there's not a conflict. And this is where I think it's very important that we look at this as an institution. I mean, it is fascinating that we're not talking about that

today. You know, you see this incredible opportunity for corruption, and yet there's silence no one's talking about on the other side, the people in power don't want to talk about it. But again, I think Senator Murkowski kind of let the cat out of the bag when she said, There's retaliation. There's repercussions we fear the president because of political actions that he may take.

So again, I thank all of you for being here.

I don't see how you get over the fact that investors are the owners of the company, and they can get any advice they want. And again, whether they want advice on climate or whether they want advice against pornography or whether they want any kind of advice, they should get it and they should invest the way they want.

And lastly, just on a personal note, if you could say hello to your sister. She was my professor at Harvard, we can say Harvard these days. We're very proud of it today. Thank you. Thank you, sir.

Subcommittee Chair Ann Wagner (R-MO)

Chair now recognizes a gentleman from Ohio, the chairman of the Subcommittee on national security, illicit finance and international financial institutions, Mr. Davidson for five minutes.

Rep. Warren Davidson (R-OH)

Thank you, Madam Chairwoman. I really appreciate you having this hearing.

I can't believe it really took us this long to get this hearing it's a common sense solution to a problem.

There are very few things where you have 97% market share by two firms. And there are people that are concerned.

And I have people here that at least one person here seems not concerned, and we have colleagues who think that the right way to run capital markets is to just, just check with CalPERS, and whatever they say is probably what we should do for the agenda for the hearing.

Thankfully, Mr. Sherman is not running the agenda for the hearing, and may we never see that day.

The, you know, the the space that we're talking about, really, you know, Chairman Hill highlighted it, but you know, ISS the incumbent in the proxy voting advisory space. was founded in 1985, ISS was a pioneer providing proxy voting recommendations to institutional investors, and they were capitalizing on growing governance expertise, as I understand it, other firms existed, but none had ISS is early, scale or influence, and then the SEC issued their 2003 rule requiring mutual funds to disclose voting policies.

Mr. Washington, do you agree with the timeline and the industry's development?

Why exactly, is it that a duopoly consisting of ISS operated 18 years before glass loose existed as now emerged? Look in almost any market, there are different economies of scale, and so there will be markets where there will be naturally, one player, two players, multiple players, I would say, you know, as a society, we are interested in encouraging more players to enter into this market. That is why we believe in light touch regulation, because we actually want the environment to be conducive to more players coming into

into the market at the same time, we want to make sure that the players who come into the market providing accurate, reliable information to their clients. So we're hopeful that legislation will proceed that will provide those market conditions to increase competition while ensuring accuracy. Thank you. Mr. Rose, what would it take to get, you know, some market share beyond the 3% that isn't gobbled up by the two big and incumbents? What would it take to get that to happen?

Mr. Paul Rose, Dean, School of Law, Case Western Reserve University, Cleveland, OH

Well, I think that it's quite challenging. If you look at markets like this, where you have a sort of certification function provided by market players. Look at credit rating agencies, you look at auditing, they tend to be dominated by a small number of folks. And so again, I guess I would reiterate Mr. Washington's point. That's why life touch regulation would be helpful here. I do think regulation is necessary, but a light touch so that it wouldn't create barriers.

Rep. Warren Davidson (R-OH)

Well, it's safe to say that they just the two firms exert quite a lot of influence over our capital markets, right? Does anyone disagree with that? Absolutely. Okay. So is it also a concern that they're both foreign own? I mean, my understanding is ISS is in by Deutsch Bors and Glass Lewis has been in by various Canadian firms, but currently Peloton Capital Management private equity firm based out of Toronto. Should we be concerned about



Mr. Paul Rose, Dean, School of Law, Case Western Reserve University, Cleveland, OH

In my view, it creates an additional layer of risk. Those firms are a little bit less, I suppose, a little bit less regulated by either US investors directly as

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

I think absolutely

Rep. Warren Davidson (R-OH)

And then, you know, we've talked a little bit about it in terms of, you know, Mr. Crain, you mentioned a potential conflict of interest inherent when proxy advisory firms are aligned there. You know, you know,

they want to serve their clients. They want to serve people maybe better by giving, you know, favorable or unfavorable referrals on proxies. So as the National Association of Manufacturers (NAM) notes, 59% of manufacturers cited unfavorable business climate as primary concern.

We often hear about the tax code barriers, however, is any part of the unfavorable climate for manufacturers connected to corporate governance guidance?

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

I think absolutely when you think about an unfavorable business climate, you think about burdens and regulations. You think about uncompetitive tax policies, as you mentioned, when you think about access to capital, one way to access capital is by going public. One thing that makes going public more difficult is the influence and the power that these proxy firms have. So I think that's absolutely fair.

Rep. Warren Davidson, (R-OH)

Thank you for your testimony today. My time has expired, and I yield back gentleman

Subcommittee Chair Ann Wagner (R-MO)

Gentleman yields back to the chair, and I recognize is the gentleman from Illinois, Mr. Casten in for five minutes,

Rep. Sean Casten, (D-IL)

Thank you. There's a certain irony hearing concerns about capital flying from the United States without mention of the last 100 days when it's running away from equities and treasuries, but I guess when I can talk about that today.

Mr. Crain, I want to just give you a hypothetical let's suppose that I am looking for a sole investor in my business. Setting aside what this business does. I need 250 grand from you. You're going to be my sole investor. You can ask me any question you want about cash flow management, my compensation hiring strategy, but I reserve the right to tell you that your questions are immaterial and not answer them.

Setting aside what my business does - are you on board?



Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

I think my first question will be, why are you approaching someone who doesn't have to give you.....

Rep. Sean Casten, (D-IL)

But would you invest in a company on those terms that that I take your money and then I get to tell you whether your judgments are material?

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

I think certainly investors in a company, especially if I'm the sole investor in your business, would certainly have some questions about what you're using.

Rep. Sean Casten, (D-IL)

So I say that as a, you know, as a guy who, you know, built some companies with, you know, with, with private equity, never, never took a company public. But I always, it always struck me that there's this disconnect where, if you're starting a company and you find an investor, it is understood that as the entrepreneur is the CEO, you are the custodian of someone else's capital, and you work for them.

And yet, once you get a large, diffuse investor base, there's this idea that somehow, well, now their questions are kind of a nuisance.

They're not as sophisticated as I am. They're not asking the kind of questions that I would have.

And since you, I guess, since you don't have the \$250,000 let me reframe the question.

I guess, reframe the question. I got my money, I want you to work for my company now. And as a condition of working for this company, you have to join a labor union, and you have to pay dues to the labor union. The labor union is going to negotiate for compensation and benefits and all that, but they have to present their proposals to me first, as the CEO, and I will, I will roll them back to you for consideration after I've had a chance to vet them. Would you want to work for that company?

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

I would admit to being a little lost in the hypothetical, but I think the

Rep. Sean Casten, (D-IL)

So has that because, like, number one, like, we have a proposal right now that would permit companies to say that shareholders are going to actually pay for these proxy advisory services, but then the company gets to review them before the people who actually paid for it can review them.

And we've got another bill that would allow the companies just to ignore certain proposals outright, because in their judgment, this isn't material, I guess.

Ms. minnow like I am sympathetic to the argument that you can't possibly have every investor in every company, someone who owns one share of a, you know, a company with 20 million shares outstanding to ask every question. But isn't this just a collective action problem in the same ways that we have, you know, we, you know, labor unions help negotiate so that people can speak with one voice? Aren't these proxy advisory firms just providing solving a collective action problem?

Ms. Nell Minow, Vice Chair, ValueEdge Advisors, McLean, VA 1:17:44

Thank you very much. I'm very, very happy with that question, because that is exactly how I describe it. The when you're making the Buy Sell decision, that's that is something that where there's a premium on exclusivity and you just want to have information that nobody else has, as long as it's legal, but when you're talking about proxy voting, I can vote the best proxy policies in the world, but if I can't get other people to vote with me, there's an awful economic term called "Rational Apathy," and it means that it's more expensive for me to learn what's on the proxy than it could possibly benefit me. And that's why proxy advisors perform such an essential role. I really appreciate that question.



Rep. Sean Casten, (D-IL)

I'm And I'm guilty of being that 96% probably just says, you know, just about what they were. Oh, you're practicing, right? So I guess I just want to leave a question for all of you, the Dan Savage, the love sex advice columnist and very funny philosopher of all things, in my view, and this great comment, it was in the context of people saying some fairly homophobic things to them. He said, when somebody accuses you of something you've never thought of, they're telling you what they're capable of. And there's something that is very strange to me that we're sitting here saying we should never allow outside groups to tell a management team that they don't that their wisdom, their judgment about how to run a company is sufficiently like that they we can't that. We have to challenge them, because they might do something foolish otherwise.

And yet, I don't hear "peep" about the [State Financial Officers Foundation](#), who's going out and telling pension funds we're going to change laws in your states because we don't want your pension fund to invest in companies that prioritize ESG, prioritize DEI, prioritize climate change.

That's a real thing. That is really a group that is actually doing the thing that we are theorizing some, I don't know some combination of George Soros and Dan Savage might be doing on the other side, but that's actually happening from the right. I yield back

Subcommittee Chair Ann Wagner (R-MO)

The gentleman's time has expired. The Chair now recognizes the gentleman from Wisconsin, the chair of the Subcommittee on digital assets, financial technology and artificial intelligence. Mr. Steil, for five minutes.

Rep. Bryan Steil, (R-WI)

Thank you very much, Madam Chairwoman, always good to have the last name pronounced like a true Luxembourger.

We have a huge opportunity today to talk about a duopoly that most Americans have never heard of, ISS and Glass Lewis, but two companies have a huge impact on their lives, their ability to save for retirement and their own financial security.

And I think a lot of Americans would be surprised to know that both of these companies are foreign own.

Mr. Crain, are either ISS or Glass Lewis, at least American companies of having such a big say on American retirement accounts?



Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

I don't know the exact structure of their ownership, but no, I don't believe so.

Rep. Bryan Steil, (R-WI)

Mr. Mr. Rose? Do you know their ownership structure?

Mr. Paul Rose, Dean, School of Law, Case Western Reserve University, Cleveland, OH 1:20:43

I believe that they are both foreign on currently, I think that they're

Rep. Bryan Steil, (R-WI)

Germany, Germany and Canada, Germany. They're foreign owned enterprises. Yep, and they're opining on us retirees accounts. This should be concerning out of the gates for people. And then we might want to know, how do they make their money? Sure, they provide advisory services, and people pay for that. But Mr. Rose, do they make money elsewhere?

Mr. Paul Rose, Dean, School of Law, Case Western Reserve University, Cleveland, OH 1:21:08

Well, they can make money through consulting services.

Rep. Bryan Steil, (R-WI)

Consulting services, why would why would somebody want to pay ISS in Glass Lewis, a German company and a Canadian company, a whole bunch of money for consulting services, a lot of consulting companies

Mr. Paul Rose, Dean, School of Law, Case Western Reserve University, Cleveland, OH

here, so they could help convince your shareholders to vote for whatever proposal.

Rep. Bryan Steil, (R-WI)

so you're saying that that conflict of interest might go right over the so called Chinese wall to the other side, because they're making money on this side and they're making money on this side, all on the backs of American retirees. Is that correct?

Mr. Paul Rose, Dean, School of Law, Case Western Reserve University, Cleveland, OH

That is the danger. Yeah.

Rep. Bryan Steil, (R-WI)

So wait a minute, we should probably disclose these conflicts of interest. Do you think?

Mr. Paul Rose, Dean, School of Law, Case Western Reserve University, Cleveland, OH

I agree.

Rep. Bryan Steil, (R-WI)

Does anybody on this, this panel think that we should not disclose conflict of interest for proxy advisors the record reflect all of our witnesses think we should disclose them? Mr. Crain, are they, of course, then required to disclose these conflicts of interest under current securities law?

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

Unfortunately, they're not.

Rep. Bryan Steil, R-WI 1:21:59

Holy cow. So it sounds like Democrats and Republicans at least agree on the point that we should know if there's a conflict of interest for foreign companies that are advising a whole host of voting on American retirement accounts. This is egregious. Well, of course, there was a period of time where the SEC came forward and said, you know, maybe we should regulate these entities. And they wrote forward a law, or they wrote for a rule and regulation, and then what happened to that rule and regulation? Mr. Crain?

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

They suspended it, and then they rescinded it.

Rep. Bryan Steil, R-WI

And were they legally allowed to do that? Mr. Rose?

Mr. Paul Rose, Dean, School of Law, Case Western Reserve University, Cleveland, OH

Sorry, repeat the question.

Rep. Bryan Steil, R-WI

Where they suspended the proxy advisor rule, where they were legally allowed to do that?

Mr. Paul Rose, Dean, School of Law, Case Western Reserve University, Cleveland, OH

They were

Rep. Bryan Steil, R-WI

And away we go. And now we don't have any rules or requirements of substance with meat and potatoes on the bones, protecting American retirement accounts, because Gary Gensler went and gutted a well thought through well structured rule that I, in my opinion, didn't even go far enough.

He guts it out. And what we're doing is we're allowing these foreign owned companies to be making money on the consulting side, not telling anyone what their conflict of interests are, and then advising places like I think CalPERS was referenced earlier by one of my colleagues on the other side of the aisle who receives this advice and counsel. That seems like a heck of a problem.

Do you agree, Mr. Crain? And so what should the SEC do? I think we should pass my legislation.

We brought forward a healthy chunk of it to the House floor. Last Congress, we passed it across the House floor. The Senate did absolutely nothing. I'll comment on the Senate later, but I think we now have a real opportunity to bring this forward, because American retirement accounts are at stake because of this, these two companies that are making money, not sharing their conflict of interest, not letting the American people know why their shares that are held in all sorts of retirement accounts, pension funds, how or why they're being voted on. Let me hit another quick point with you. If I can, Mr. Crain, what happens? Of course, it wouldn't be the conflict of interest. I don't want to accuse anybody of any wrongdoing, but what would happen if they gave terrible advice? Let's say there was a proxy advisor that recommended a yes vote in favor of a resolution that was illegal.

Has that ever happened? Mr. Crain?



Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

I absolutely would. If that happened, they would probably be Robo voted in the favor of that resolution. If that's the recommendation they made.

Rep. Bryan Steil, R-WI

And so when we had the General Counsel of ISS and the general counsel of Glass Lewis, and I asked them, they sat right where you sat? And I said, Mr. General Counsels, do you review for legality? And what was their answer to me, "no," in my opinion, they've advised in a case of travelers.

We could look it up. We could spend more time on this sometime to actually recommend in favor of an illegal action. Do you agree with that? Mr. Washington?

Mr. Paul Washington, President & CEO, Society for Corporate Governance, New York, NY

Yes, that has and so this is horrific.

Rep. Bryan Steil, R-WI

So they're not are they and are they liable for that?

Do you know, Mr. Washington?

Mr. Paul Washington, President & CEO, Society for Corporate Governance, New York, NY

Not under the current regulatory framework.

Rep. Bryan Steil, (R-WI)

So in my bill, they would at least be liable for that. We have massive reform that needs to be done on the this proxy advisor, duopoly, I'm excited. We're here talking about it. Thank you, Madam Chair, for holding today's hearing. I yield back.

Subcommittee Chair Ann Wagner (R-MO)

The gentleman yields back. The Chair now recognizes gentlewoman from Michigan, Mr. McClain,

Rep. Brad Sherman, (D-CA)

I request 10 seconds.

Subcommittee Chair Ann Wagner (R-MO) 1:25:13

No, The Chair now recognizes the gentleman, gentleman from Michigan. Ms, McClain, for five minutes.

Rep. Lisa McClain, R-Michigan 1:25:22

Thank you, Madam Chair, thank you, Mr. Steil, for bringing forth this wonderful piece of legislation.

I think it's well noted the I do have to take one moment and just notice the hypocrisy.

We think conflict of interest is a bad thing, right?

Except when it's like from our party's conflict of interest, or it has something to do with me.

So what I would just ask all the witnesses up there is, could we just keep our context the same no matter what context it is? And I think it's very interesting that my friends across the aisle want to talk about influence peddling, and they accuse our president of having a conflict of interest and maybe having some influence peddling, when we had hearing after hearing about the past President Biden and his son Hunter, Biden clearly doing influence peddling, but I think they had a different view on that.

However, Madam Chair, I am extremely excited to know that this is a bipartisan piece of legislation or bipartisan hearing that we actually agree on, and that is, transparency is good, right?

I mean, Mr. Crain, Congress has mandated that investment firms must be fiduciaries, correct?

That's exactly right. However, the firms they are hiring, the proxy firms, do? They have the same responsibilities and goals like fiduciary as the firms do? it safe to say their goals don't align?



Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

Yes.

Rep. Lisa McClain, (R-Mich)

Do you think that's a problem?

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

I do.

Rep. Lisa McClain, (R-Mich)

I think so too. I think the American people would say that's a problem as well. Mr. Crain, these proxy advisors are claiming that despite their tremendous influence over how investors cast their vote, that they should not be subject to sec oversight.

Can you which is very interesting to me, but can you discuss the history of the SEC authority to regulate proxy advisers?

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

Absolutely. This goes back to 1934 the Exchange Act. Congress, in your wisdom, your predecessors, gave the SEC the authority to regulate solicitation and soliciting entities. What the proxy firms are doing in the present day is soliciting. They're soliciting proxies and casting them on investors behalf, and yet they are arguing in court this week that they aren't soliciting, that they shouldn't be subject to sec regulation.

Rep. Lisa McClain, (R-Mich)

It's different, different kind of like our conflict-of-interest opinions, right?

Mr. Crain, can you also describe how the Biden administration created more uncertainty surrounding this proxy advisory industry.

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

So under the first Trump Administration, the SEC under Chairman Clayton, had finalized a common sense compromise rule that had been in process for a decade at that point, under Chairman Gensler, under the Biden administration, they suspended and then ultimately rescinded that rule. Both of those decisions were found to be unlawful in federal court, but the effect that they have on the market is it's the pendulum effect that you just mentioned, where companies don't know what the rules of the road

Rep. Lisa McClain, (R-Mich)

interesting. Maybe there's a conflict of interest there. We should look at but let's not look fast, given we have a good story, right?

Ms. Ising ISS describes ESG policies as being no longer optional, but rather a necessary part of investment and asset management, and part of this strategy involves committing to the 1.5 degrees Celsius of the pair of the Paris Agreement.

Companies have a fiduciary responsibility to their shareholders yet are being held hostage by the agenda of staff at foreign owned proxy advisory firms. Can you discuss reasonable, common-sense regulation that would protect shareholders from the ideological preferences of rogue staff?

Ms. Elizabeth Ising, Partner, Gibson Dunn, Washington, DC 1:29:42

I think the key here is, is that we do not have sunshine on what the proxy advisors are doing. We constantly see errors in the reports, whether it's on pro ESG proposals, it's counter ESG proposals. The issue is, who are the people making the decisions, and why is it that we need to pay for consulting services to be able to have the understanding of the underpinnings and the ultimate decisions that ultimately dramatically impact the proxy voting positions being made.



Rep. Lisa McClain, (R-Mich)

Thank you. And with that, I yield back Madam Chair.

Speaker 1 1:30:17

John the lady yields back The Chair now recognizes a gentleman from Florida, Mr. Herodopoulos, for five minutes.

Rep. Mike Haridopolos (R-FL)

Thank you, Madam Chair. And also let the folks know that the Florida attorney general's actually launched an investigation of ISS in Glass Lewis and on the impacts that they have had on Florida businesses, etc. And I'm glad to see our Attorney General in Florida making that maneuver.

Mr. Crain, I want to ask you a question, if I could please, what would be the consequence for our markets? If ISS prevails, it is litigation against NAM In your opinion?



Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC 1:30:48

Essentially, they would be entirely unregulated. And so all of the consequences that we've been talking about today, the conflicts of interest, the errors, the one size fits all, policies, the robo voting, they would be left entirely unchecked from a regulatory perspective, and that's incredibly problematic for public companies, and probably more importantly, for their investors, who are the ultimate owners of those companies.

Rep. Mike Haridopolos (R-FL) 1:31:08

And just to kind of build on that, I really appreciate Congressman Steils, points that are made up, and I want to emphasize the Gensler actions the last four years have been a little bit challenging for this committee on multiple fronts.

What is your what do you think the consequence of Mr. Gensler has been in given the SEC guidance on this issue?

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

So, what the Gensler SEC did is essentially rescind all the efforts previous that had been made to bring proxy firms under reasonable oversight, and then they even went further and stopped defending their authority to write any type of rule at all. So if ISS is successful in this case, the SEC used to be in that case, and they walked back from that opinion that they even have any authority in this space at all, trying to tie the hands not just up against their SEC, but any future SEC under a different administration. So, it's incredibly problematic, specifically in this proxy firm space.

Rep. Mike Haridopolos (R-FL)

And my last question, Mr. Crain, please describe to me that maybe some examples of the most egregious current conflicts of interest among proxy advisors and some of the adverse impacts it has had on investors, if you could?

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

So, the clearest conflicts of interest is, ISS consulting service, and we know as publicly traded companies, is publicly traded manufacturers, that the business consulting service will wait for a negative recommendation from the proxy voting service, and then as soon as that negative recommendation comes in, that's when they send out their ask for businesses to buy their services. Because the best way to avoid a negative vote, a negative vote recommendation, I should say, is to just hire ISS.

But it's not just ISS.

Glass Lewis has recently launched a stewardship service where they're advising activist investors and institutions on how to best pressure and influence companies, whether it's by share, order, proposals, by vote, no campaigns, etc, who's going to ultimately be recommending whether shareholders should vote for those campaigns? It's Glass Lewis.

And so the conflicts are baked into their business models, and that has a real impact on the recommendations they make and on the companies that they're making recommendations about, and ultimately on the investors who have holdings in those companies.

Rep. Mike Haridopolos (R-FL)

Madam Chair, just to close, I want to applaud you for bringing this to our attention as a new member of the committee. It is important as we understand some of these moving parts, and it it's really eye opening, to

say the least, some of the things that Chairman style, as well as Miss McClain and others have brought up today. We appreciate the candid information, and I am so glad that our Attorney General Ford is also looking at these type of measures, because, again, this is the future of so many folks who have made investments and to see that this type of unique behavior to be generous takes place. I'm glad that we're having this public disclosure so we can put the appropriate legislation in place to stop some of the shenanigans that have happened.

So thank you so much, Madam Chair, and I yield back.

Rep. Troy Downing, R-Montana 1:34:00

Thank you, Madam Chair. Before I begin, I would like to request unanimous consent to submit this comment. Letter from Egan Jones, proxy services for the record. Objection is ordered. Well, thank you. I'm going to start out with Ms Ising, Institutional investors are required to act in the interest of their clients to maximize their returns, yet ISS and Glass Lewis have been criticized for routine, routinely endorsing left leaning proposals at shareholder meetings. ISS and Glass Lewis control 90% of the proxy advisory industry and can sway up to 30% of votes in shareholder meetings. Can you give some specific examples of when ISS and Glass Lewis endorsed proposals that were not focused on maximizing the returns or or resulted in diminished returns for investors.



Ms. Elizabeth Ising, Partner, Gibson Dunn, Washington, DC 1:34:49

I'm happy to do so, and I would note that would even the voting percentages that were given recently are particularly notable, because last year, ISS recommended for more than half of all shareholder proposals that were voted on just in 2024 and we see that it broke into your question of how they were not focused.

They don't do a cost benefit analysis. Our companies boards of directors have fiduciary duties to act in the best interest of the company and shareholders to maximize shareholder returns and those they are not always the proxy advisors are not taking that into account and doing their analysis.

So for example, there was recently a proposal, a shareholder proposal, that ISS supported on the use of pig gestation crates in a company supply chain.

The company noted that it didn't breed, process, transport, own or raise animals, and that it already announced a move away from sourcing pork raised and gestation crates.

And yet ISS said, "No. This is something that companies should be spending its time on."

Rep. Troy Downing, R-Montana

So, is there any reason to believe that ESG related proposals are generally more aligned with shareholder value than right leaning proposals?

And you know, if not, how do you explain the discrepancy in the proxy advisors recommendations?

Ms. Elizabeth Ising, Partner, Gibson Dunn, Washington, DC 1:36:03

So I cannot explain the discrepancy. What I will say is, is that this is a symptom, a of on a related notice is there's just, there's a need for meaningful reform on shareholder proposals, right? That needs to happen, and the fact that the proxy advisory firms are so focused on supporting many of these proposals, they shouldn't even be getting to the ballot. Well, thank you.

Rep. Troy Downing, R-Montana

Move to Mr. Crain. Does the way the proxy advisory industry operates in the US discourage companies from going or staying public?

Mr. Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Washington, DC

It absolutely does. So. America has the deepest and most liquid capital markets in the world, and if you're a company looking to grow, then going public is a critical way to access capital, which is obviously important for that company, but it's also important for everyday investors, who largely can't invest in privately held companies. But when a business goes public, they have that investment opportunity, and they can take advantage of the growth opportunities as that investment grows as that company grows.

But if you're considering going public, and you're looking at burdensome, costly regulations, and you're looking at having to be held accountable by these firms who are themselves unregulated, meanwhile, you're making a whole bunch of SEC disclosures, but the proxy firms are not they're effectively unregulated, and yet they're exerting influence on the corporate decisions that you're making, that's a real disincentive from going public, and that has a significant impact on both companies and investors.

Rep. Troy Downing, R-Montana 1:37:27

I appreciate that. And, you know, I had some experience that is led me to some conclusions about the weaponization of these proxy programs. You know, I was a former securities and insurance regulator, and

I had some public reinsurance companies coming to me saying, We know we're making decisions that are not in the interest of the business. You know, a lot of it was about not, you know, not putting risk money out for oil and gas because they didn't want to be involved in that. And they said, but their backs were against the wall because of these proxy votes. So I've seen that as a regulator, and it's really, really bothered me. I'm gonna move on to Professor rose. Do you have any more suggestions that have not been mentioned today to increase competition the proxy, advisor, advisory

Mr. Paul Rose, Dean, School of Law, Case Western Reserve University, Cleveland, OH 1:38:15

Well, as I mentioned, I think it's it is a real challenge, and I am quite hopeful that maybe technological innovations can help provide some benefits here.

Maybe there are ways to get around some of the work that the proxy advisors do perform those functions, but without the political leanings that might accompany that. But it is a real challenge.

I do think the proposed legislation could help again, so long as those regulations are not overly burdensome. Thank you. The barriers to entry are not too significant, yeah.



Rep. Troy Downing, R-Montana 1:38:54

Thank you sir.

Finally, Mr. Washington, how does your advice to members defer based on whether the proxy advisors are likely to remain recommend a quote vote for or a vote against a particular shareholder proposal?

Mr. Paul Washington, President & CEO, Society for Corporate Governance, New York, NY

So in all cases, the board needs to consider what is in the best interest of the corporation. The issue is that the proxy advisory firms can tilt the balance of those considerations, because it increases controversy, reputation, risk and so forth that can affect the board's decision making.

And I just if I might, there's no doubt that our members truly value the conversations that they have with their real investors.

There's no question of that. Question is here, the proxy advisory firms are not in the same position as the investors, and yet they yield...

Rep. Troy Downing, R-Montana

Thank you, Madam Chair. I yield my time.

Subcommittee Chair Ann Wagner (R-MO)

I thank all of our members for participating. I'd like to thank all of our witnesses for their testimony today in this long overdue hearing on cleaning up the proxy advisory atmosphere.

I'll say, and we've got some good legislation that I think is going to do that, and I think we've got grand support for so without objection, all members will have five legislative days to submit additional written requests for the witnesses to the chair. The questions will be forwarded to the witnesses for their response, which is please respond no later than June 4 2025.

This hearing stands adjourned.



###

Appendix B – Democratic Staff Memo

April 25, 2025

Memorandum

To: Democratic Members, Committee on Financial Services

From: FSC Democratic Staff

Subject: Tuesday, April 29, 2025, Subcommittee on Capital Markets Hearing entitled, “Exposing the Proxy Advisory Cartel: How ISS & Glass Lewis Influence Markets”

Hearing Details

- Subcommittee on Capital Markets
- Title: “Exposing the Proxy Advisory Cartel: How ISS & Glass Lewis Influence Markets”
- Date: Tuesday, April 29, 2025
- Time: 2:00 PM ET
- Location: Rayburn Room 2128
- Witnesses:
 - ***Democratic Witness***: Nell Minow, Vice Chair, ValueEdge Advisors
 - Beth Ising, Partner, Gibson Dunn
 - Paul Rose, Dean, Case Western Reserve Law School
 - Paul Washington, President and CEO, Society for Corporate Governance
 - Charles Crain, Managing Vice President, National Association of Manufacturers

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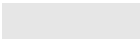
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I. Key Messages

- *Donald Trump was handed one of the strongest economies in a generation with a buzzing stock market and the lowest unemployment in 50 years by President Biden. In less than 100 days, Trump's managed to tank the stock market, wipe out Americans' retirement savings, undermine the US dollar, and hit American consumers and small businesses with the largest tariff tax hike in nearly a century.*
 - Under the Trump Administration, here is what we are seeing:
 - **Stock markets are down.** Down 15% since Trump's inauguration – amounting to nearly \$10 trillion dollars in erased wealth in less than three months,
 - **The U.S. dollar is down.** The dollar is worth 11% less since Trump's inauguration. This means families' purchasing power is weakened and interest rates stay high.
 - **Business deals have stopped.** Companies planning to go public have put these plans on pause as a result of the uncertainty and chaos surrounding the tariffs. Including companies like Klarna, StubHub, and Chime.
 - **After decades of hard work, people are now putting their long-planned retirement on hold.** Millions of Americans hold retirement accounts. There are various plans, such as IRAs and 401(k)s, invested in stocks, bonds, and target-date funds. These tariffs are leading to market volatility and lower returns for pension funds invested in the stock market.
 - Donald Trump is further undermining and harming our nation's capital markets with his **repeated threats to illegally fire the Chair of the Federal Reserve, Jerome Powell**. Not to mention, his **fraudulent memecoin** which collectively lost his investors \$2 billion while him and his family pocketed \$350 million, but now Trump is offering special access to the top 220 holders of his memecoin. Along with potential surrounding **insider trading** around his tariff announcements.
- *Investors, big and small, rely on proxy advisors to help them access critical information and make informed decisions when voting on the direction of the companies they own. While Elon Musk, Jeff Bezos, Mark Zuckerberg, and the rest of the billionaire class enjoy the luxury of their own inside advisor in the form of Donald Trump, Republicans are targeting the proxy advisors that everyday investors – those without wealth or powerful connections – depend on.*
 - **Under Trump and Republicans, only the rich and well-connected get access to crucial information.** There is evidence based on a series of actions taken by President Trump that suggest the President or his team may have provided friends, insiders, and even Members of Congress with material, nonpublic, and market-moving information—enabling them to illegally profit from the market spike following the President's tariff walk-back announcement. **In recent weeks, we've seen blatant examples of insider trading allowing Trump's insiders to make a fortune from the economic and tariff chaos.**
 - **In fact, Trump announced that he is providing exclusive access to the top 220 holders of his memecoin, \$TRUMP.** The anonymous nature of crypto ownership allows anyone—even foreign adversaries—to anonymously funnel dollars directly into

the President's pocket in exchange for face time with him. Some of the top holders of his coin are Binance-based wallet addresses. This comes after the President and his family have already made hundreds of millions of dollars in trading fees off the coin.

- **This information is needed now more than ever.** In the face of economic uncertainty, insider trading at the hands of the President, and fears of a catastrophic recession, now more than ever, investors need to be adequately informed.
- **This is part of the Trump Administration's larger agenda to take from ordinary, working-class people so they can give to their billionaire friends.** In fact, during Wednesday's markup Republicans will make the case for cutting money intended to keep our financial system stable and working-class families afloat, to make room for tax cuts for billionaires.
- The proposals being offered by Republicans would make it harder for ordinary investors to offer proposals and vote on initiatives that would make companies more profitable by becoming more resilient to climate risks, fostering diversity inclusion at every level of their workforce, and creating an environment where all of their workers can thrive.
- ***While Republicans work with the Trump Administration to destroy the thriving economy and stock market built by Democrats, Committee Democrats will continue working to hold the Administration accountable, build back a strong economy that works for everyone, and fight to preserve the freedom of investors to buy the analyses and research they want.***

II. Background

This hearing examines the proxy advisory industry, which assists shareholders in managing the process of voting on the proposals that are considered at public companies' annual shareholder meetings (a process otherwise known as "proxy voting"). Proxy advisors provide analyses and voting recommendations for the hundreds—and sometimes thousands—of complex proposals that investment fiduciaries would otherwise have to parse through using their own time and resources. While large institutional investors like BlackRock and Vanguard have dedicated teams and funding to perform this task, small- and mid-sized investment managers, state and employee pension funds, and individual retail investors rarely have the financial resources, staff or time to complete this task.

A. Proxy Advisory Firms

Institutional investors—which include pension funds, endowments, employee benefit plans, and mutual funds¹—invest and manage the savings of millions of Americans, and collectively own approximately 75% of the market value of U.S. public companies.² As such, institutional investors have significant influence and responsibilities during "proxy season" (typically taking place between mid-April to mid-June) wherein the annual shareholders' meetings of public companies are typically held and shareholders are presented with an opportunity to vote on a range of matters regarding the company's

¹ Investopedia, [Institutional Investors: Who They Are and How They Invest](#) (Nov. 22, 2021).

² Better Markets, [Comment re: Amendments to Exemptions From the Proxy Rules for Proxy Voting Advice](#), 86 Fed. Reg. 67,283 (Release Np. 34-93595; File No. S7-17-21) (Dec. 27, 2021).

policies.³ Importantly, registered investment advisers—per the Investment Advisers Act—⁴ have a fiduciary responsibility to act in the best interests of those whose money they manage.⁵

Proxy advisory firms provide independent research and analysis on matters subject to a shareholder vote, craft voting guidelines to meet the policies and investment goals of institutional investors and advisers, and make voting recommendations to their clients on specific matters subject to a shareholder vote, either based on the proxy advisory firm’s own voting guidelines or on custom voting guidelines that the client has created.⁶ Additionally, proxy advisory firms also maintain certain electronic platforms and other administrative capacities to help institutional investors and investment advisers cast and track their votes.⁷ The two largest proxy advisory firms are Institutional Shareholder Services (ISS) and Glass Lewis.⁸ Proxy advisory firms are not required to be registered under any Federal law, though ISS is registered as an investment adviser under the Investment Advisers Act.

Among the common arguments supportive of proxy advisors include their ability to facilitate more efficient shareholder engagement and corporate suffrage, promotion of corporate accountability and governance standards, and reduce information asymmetry between shareholders and companies. Regarding the first, proxy advisory firms empower investors—especially those with limited resources—to actively participate in shareholder voting instead of simply voting with management (or not voting at all).⁹ By offering detailed analyses and voting recommendations on proposals up for a vote at annual shareholder meetings, these firms reduce information costs and enable investors to make informed decisions on proposals they otherwise do not have the time or funding to research themselves.¹⁰ Proxy advisors have also contributed to improved accountability for corporate governance by providing investors with voting recommendations that are not always in line with those offered or pushed by management.¹¹ Please see the Appendix (Section VI) portion of this memorandum for a list of examples of critical shareholder votes that later became seen as best practices in the corporate governance space (including proposals to require a report on the use of child labor in supply chains; to require a company to conduct a health and safety audit regarding employee working conditions; to report on the connection between drug pricing and excessive executive compensation; and to address drinking water contamination due to corporate mismanagement). Finally, proxy advisory firms are said to help bridge the information gap between companies and their shareholders by providing the latter with independent research and analysis, enabling shareholders and their fiduciaries to make well-informed voting decisions.¹²

Some of the criticism of the proxy advisory industry includes its lack of competition, potential conflicts of interest, and outsized influence on the proxy voting process. ISS and Glass Lewis collectively control approximately 90% of the market for proxy voting advice.¹³ This concentration has led to concerns about limited competition and the potential stifling of diverse perspectives in corporate governance.¹⁴

³ Investopedia, [What is Proxy Voting?](#) (Dec. 29, 2020).

⁴ Lowenstein Sandler, [Client Alert: SEC Clarifies Federal Fiduciary Duties of Investment Advisers](#) (July 2, 2019).

⁵ UN PRI, [The modern interpretation of fiduciary duty](#) (Nov. 6, 2020).

⁶ UN PRI, [The modern interpretation of fiduciary duty](#) (Nov. 6, 2020).

⁷ *Id.*

⁸ Diligent, [“Proxy Advisory Firms: What They Are & Why You Should Care”](#) (Dec. 21, 2023).

⁹ Proxyimity, [The Role of Proxy Advisors in Shareholder Voting and Corporate Governance](#) (accessed Apr. 21, 2025).

¹⁰ Jiyang Zhao, [“Proxy Advisors: a Double-Edged Sword for Institutional Investor”](#) (2023).

¹¹ Proxyimity, [The Role of Proxy Advisors in Shareholder Voting and Corporate Governance](#) (accessed Apr. 21, 2025).

¹² FasterCapital, [The Importance Of Proxy Advisory Firms In The Nomination Process](#) (accessed Apr. 21, 2025).

¹³ Harvard Law School Forum on Corporate Governance, [“Proxy Advisors And Market Power: A Review of Institutional Investor Robovoting”](#) (May 27, 2021).

¹⁴ Harvard Law School Forum on Corporate Governance, [“Proxy Advisors And Market Power: A Review of Institutional Investor Robovoting”](#) (May 27, 2021).

Proxy advisory firms have also been criticized for offering both voting recommendations to institutional investors and consulting services to corporations seeking assistance with shareholder proposals or improving their governance ratings.¹⁵ Commentators believe this dual role could create conflicts of interest, as firms may have incentives to align their advisory services with the consulting needs of corporate clients.¹⁶ Such conflicts, they say, can undermine the objectivity of voting recommendations and raise questions about the integrity of governance assessments.¹⁷ Over 95% of ISS's proxy vote recommendations are aligned with the preferences of the management of the companies. Finally, observers have noted that the market share held by ISS and Glass Lewis grants them substantial influence over the proxy voting process, effectively allowing them to shape corporate governance outcomes.¹⁸

Corporate management has long lobbied to reduce the influence of proxy advisory firms. Under the Trump Administration, the SEC issued a final rule in 2020 that inhibited the ability of proxy advisors to offer independent and unbiased proxy voting advice.^{19,20} Among other things, the 2020 rule required proxy advisory firms to give corporate management the opportunity to review and provide feedback on their proxy advisory reports before submitting them to clients, and required proxy advisory firms to include a link to corporate management views in the proxy advisory report upon request.²¹ Institutional investors and other clients of proxy voting advice businesses had expressed concerns that these conditions could impose increased compliance costs on proxy voting advice businesses and impair the independence and timeliness of their proxy voting advice.²² There are also concerns that forcing proxy advisors to give issuers a space to critique their advice amounted to a violation of the First Amendment and essentially amounted to “compelled [or forced] speech.”²³ Amendments offered under the tenure of SEC Chair Gary Gensler in 2022 repealed the aforementioned aspects of the Clayton-era rule.²⁴ Republican-led H.R. 4767,²⁵ previously passed out of committee on a partisan vote in the 118th Congress, would have codified the 2020 Clayton-era rule.

B. Shareholder Proposals

Shareholders, who are the owners of a company, have a legal right to offer proposals to be voted on at a company's annual shareholders meeting alongside any proposals offered by management—thereby giving them an opportunity to influence the direction of a company's strategy.²⁶ SEC Rule 14a-8 specifically allows shareholders to submit proposals to be included in the company's proxy statement, which provides details on upcoming items to be voted on at the company's annual meeting.²⁷ The rule also allows companies to petition the SEC to exclude certain proposals if they fall into one of several

¹⁵ Columbia Business Law Review, [ISS and Other Proxy Advisory Firms' Conflicts of Interest](#) (Jan. 28, 2022).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ American Council for Capital Formation, [New Report: Proxy Advisory Firms Operate with Unchecked Power](#) (May 1, 2018).

¹⁹ [17 CFR Part 240](#) (SEC Release No. 34-87457; File No. S7-22-19).

²⁰ Better Markets, [Comment Letter on Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice](#) (Feb. 3, 2020).

²¹ *Id.*

²² Council of Institutional Investors, [“Press Release: Leading Investor Group Dismayed by SEC Proxy Advice Rules”](#) (July 22, 2020).

²³ See, e.g., Steven J. Cleveland, [“The SEC's Unconstitutionally Compelled Speech,”](#) 111 Ky. L.J. 199 (2023).

²⁴ SEC, [SEC Adopts Amendments to Proxy Rules Governing Proxy Voting Advice](#) (July 13, 2022).

²⁵ Congress.gov, [“H.R. 4767 – Protecting Americans' Retirement Savings from Politics Act”](#) (accessed Sep. 6, 2024).

²⁶ See Shareholder Rights Group, ESG Proxy Voting and Shareholder Proposals Briefing Paper (accessed Sep. 5, 2024) (“What is a shareholder proposal? The proposal is a 500-word statement that must meet a series of rigorous SEC tests (relevance to the company, transcending ordinary business, not relating to a personal grievance) to qualify for inclusion in the proxy. Prior to proxy season the SEC staff conducts an informal assessment process compliance with these rules known as the no action process to consider company letters requesting that the SEC staff state that it would not recommend an enforcement action if the targeted shareholder proposal were omitted by the company from the proxy statement. Shareholder proposals are largely non-binding on the company. They typically request disclosure or a specific course of action by the company.”).

²⁷ SEC, [SEC Proposes Amendments to Shareholder Proposal Rule](#) (July 13, 2022).

enumerated exceptions.²⁸ Amendments to this rule finalized during the tenure of Trump-appointed SEC Chair Jay Clayton made it harder for shareholders to submit proposals by adding new requirements, including:

- an increase in the minimum stock a shareholder must hold before being eligible to submit a proposal from \$2,000 to \$25,000;
- a prohibition on shareholders aggregating holdings to meet the holding requirement;
- an increase in the minimum threshold of support that a proposal must garner to be eligible for resubmission at a future shareholder meeting;
- a limit on the number of proposals a shareholder can submit for a particular meeting;
- a word count limit on the proposal; and,
- deadlines for submission.²⁹

In July 2022, the SEC under Chair Gensler proposed amendments to the Clayton-era rules that would effectively repeal many of the 2020 amendments, stating that they disenfranchise shareholders for the benefit of company management.³⁰ As of today, Gensler's 2022 amendments have yet to be formally approved by the Commission. In February 2025, the SEC's Division of Corporation Finance issued updated staff guidance that effectively reverted to the pre-Gensler guidance regarding two specific exceptions (of the broader list enumerated in Rule 14a-8(i)) that companies are allowed to avail themselves of to exclude shareholder proposals from their ballots.³¹

The first relates to the "economic relevance exclusion," which allows a company to exclude a shareholder proposal if it relates to a matter not economically relevant to the company's business. In the Gensler guidance, the SEC advised that when analyzing whether to allow the exclusion to apply, it would focus less on the nexus between the proposal and the issuers business but instead on the social policy significance of the issue, giving weight to whether the proposal raises issues with a "broad societal impact" that "transcend the ordinary business of the company."³² In the revised 2025 guidance, the SEC reverted to the traditional approach of considering just the nexus between the proposal and the company's business, and further clarified that matters of social or ethical significance are not de facto includable simply because they may cause reputational or economic harm—thereby allowing issuers to more easily exclude these types of proposals.³³

The second exclusion the 2025 guidance imposes is the "ordinary business exclusion," which allows an issuer to exclude a shareholder proposal that falls outside the scope of the company's ordinary business.³⁴ In the revised 2025 guidance, SEC staff advises that it will take a company-specific approach in evaluating the significance of the proposal's subject matter to the company's business, rather than focusing solely on whether a proposal raises a policy issue with broad societal impact or whether particular issues are universally "significant" (as per the Gensler-era guidance).³⁵ The result of this guidance makes it easier for issuers to exclude shareholder proposals, including those that are related to managing climate risk and increasing transparency around emissions, employee pay, and diversity hiring, as those matters would all arguably fall into the "broad societal impact" bucket that the guidance instructs SEC staff to ignore when considering whether a proposal should be included or excluded.

²⁸ 17 CFR § 240.14a-8.

²⁹ Better Markets, [Comment Letter re: Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8](#) (Release No. 34-87458; File No. S7-23-19) (Feb. 3, 2020).

³⁰ SEC, [SEC Proposes Amendments to Shareholder Proposal Rule](#) (July 13, 2022).

³¹ SEC Division of Corporation Finance, [Shareholder Proposals: Staff Legal Bulletin No. 14M \(CF\)](#) (Feb. 12, 2025).

³² Dechert, [Post-Election Regulatory Changes to Corporate Governance Mirror Broader Political Shift](#) (Feb. 20, 2025).

³³ *Id.*

³⁴ Dechert, [Post-Election Regulatory Changes to Corporate Governance Mirror Broader Political Shift](#) (Feb. 20, 2025).

³⁵ *Id.*

Several Republican bills considered and voted on last Congress sought to codify the Clayton and Trump-era rule. These bills would have made it harder for shareholders to put forth proposals that increase accountability for and transparency around environmental practices, diversity hiring, employee pay and benefits, and broader “C-suite” issues like director and officer compensation and stock buybacks. For example, one bill, H.R. 4767³⁶, would have raised the resubmission thresholds for shareholder proposals which could keep certain topics off corporate ballots for years. Although the goal of these Republican-led bills has been to limit shareholder proposals that promote environmental and diversity-related initiatives, their bills have also aimed to curtail proposals on a multitude of other important issues, including—but not limited to—those that would rein in large executive compensation packages, discourage excessive risk taking by management, improve employee access to benefits like health care and company-sponsored retirement accounts, increase employee salaries and opportunities for training, and so on.

C. Attack on Proxy Advisors and Shareholder Engagement is part of Republican’s Attacks on Shareholder Rights and Corporate Suffrage

1. Project 2025

Project 2025, the policy blueprint for radically restructuring and reducing the size of the Executive Branch while maximizing the concentrating power in the President, includes states that with regard to the Securities and Exchange Commission (“SEC”) the aims of the incoming Republican presidential administration will be to:

- “[p]rohibit the SEC from requiring issuer disclosure of social, ideological, political, or ‘human capital’ information that is not material to investors’ financial, economic, or pecuniary risks or returns”; and
- “[o]ppose efforts to redefine the purpose of business in the name of social justice; corporate social responsibility (CSR); stakeholder theory; environmental, social, and governance (ESG) criteria; socially responsible investing (SRI); sustainability; diversity; business ethics; or common good capitalism.”³⁷

Regarding the Department of Labor (“DOL”), the Project 2025 stipulates that:

- DOL should prohibit ERISA plans from investing in assets based on their adherence to ESG-based criteria, which Project 2025’s authors claim are “unrelated to investor risks and returns” and should return to the Trump Administration’s approach of permitting only the consideration of pecuniary factors in ERISA. As reference, the Employee Retirement Income Security Act (“ERISA”) is a federal law that sets minimum standards for most private industry retirement plans;”
- the Federal Retirement Thrift Investment Board (“FRTIB”), which administers the Thrift Savings Plan or “TSP”— the retirement benefit plan used by most federal employees— should remove BlackRock and State Street Advisors given their past support of ESG investment initiatives, and the federal government should contemplate enforcement actions against them for violation of fiduciary duties; and
- “Congress should enact legislation authorizing the FRTIB to exercise its independent business judgment in exercising the proxy votes for its holdings of the TSP and provide clear proxy voting guidelines for the FRTIB to follow. The current proxy adviser market is dominated by

³⁶ Congress.gov, “[H.R. 4767 – Protecting Americans’ Retirement Savings from Politics Act](#)” (accessed Sep. 6, 2024).

³⁷ “[Mandate for Leadership: The Conservative Promise](#)” at 832 (accessed Sep. 3, 2024).

two firms, Institutional Shareholder Services and Glass Lewis, which use heavily weighted ESG criteria in directing the proxy votes of pension plans. If feasible, the new legislation should also offer a streamlined process for other proxy advisers to compete for the TSP's business."³⁸

2. Republican State Attorneys General

Republican State Attorneys General ("State AGs") have made a concerted effort to go after proxy advisors' consideration of sustainability and diversity-related variables when advising their clients on how to vote on shareholder proposals. For example, 21 Republican State AGs sent a letter to ISS and Glass Lewis, the primary proxy advisory firms, questioning whether their guidance on issues like climate change or boardroom diversity violate their duties to clients.³⁹ ISS and Glass Lewis responded to these letters, strongly defending their consideration of sustainability and diversity criteria, stating that they believe that companies should be considering material environmental and social factors in all aspects of their operations and that companies should provide shareholders with disclosures that allow them to understand how these factors are being considered and how attendant risks are being mitigated.⁴⁰ This parallels the efforts by Republican State AGs to prevent pro-sustainability and diversity investment managers from managing assets for their states' pension funds,⁴¹ and is part of a broader trend of the attack on sustainability and diversity-related initiatives at the state level. For example, a group of Republican AGs are preventing asset managers that incorporate sustainability and diversity into their investment strategy from being able to invest on behalf of their states' pension funds.⁴²

III. Setting the Record Straight

X Misconception: *sustainability and diversity-focused shareholder proposals are fundamentally at odds with a company's bottom line, and pushing companies to adopt such policies will ultimately hurt the retirement savings of everyday people who expect the companies they invest in to maximize profits.*

✓ **Correction:** Corporations that are actively managing and planning for climate change—which includes providing public climate-related disclosures—earn an 18% higher return on investment than companies that aren't – and 67% higher than companies who refuse to disclose their emissions.⁴³ Furthermore, research shows that diverse boards lead to improved financial results; indeed, companies with the highest percentages of women board directors outperformed those with the least by 53% when it comes to return on equity.^{44,45}

X Misconception: *Shareholder proposals are superfluous because they can already broadcast their views on the company's direction to management by voting to remove or add a director.*

✓ **Correction:** The message management receives from an up or down vote on a director is much less clear than a shareholder proposal, which generally indicates a specific policy

³⁸ "Mandate for Leadership: The Conservative Promise" at 607-08 (accessed Sep. 3, 2024).

³⁹ Reuters, [Top U.S. proxy advisers defend their ESG approaches](#) (Feb. 1, 2023).

⁴⁰ See Glass Lewis, [Response to State Attorneys General](#) (Jan. 31, 2023); See also ISS, [Statement in Connection with ISS' Reply to State Attorneys General Letter](#) (Jan. 31, 2023).

⁴¹ CNN, [BlackRock, European firms face Texas pension ban over energy policies](#) (Aug. 24, 2022).

⁴² ESG Today, [Republican AGs Warn Asset Managers that ESG Investing Risks Fiduciary, Antitrust Violations](#) (Apr. 3, 2023).

⁴³ The Guardian, ["Sustainable corporations perform better financially, report finds"](#) (accessed Sep. 25, 2023).

⁴⁴ BoardReady, [Lessons from the Pandemic: Board Diversity and Performance](#), (Jul. 13, 2021).

⁴⁵ L. E. Gomez, M.D., M.B.A., Patrick Bernet, Ph.D., Diversity improves performance and outcomes, (Aug. 2019).

change. Shareholder proposals are also a critical tool for expression of the collective views of shareholders, permitting them to communicate with each other as well as the company on whether an issue or approach has support. Moreover, the shareholder proposal process can be an effective means of effectuating shareholder input even if certain proposals never come to a vote.⁴⁶ Many shareholder proposals are withdrawn following discussions between the filer and the company because the two parties are able to reach an agreement that satisfies the filer.⁴⁷ In these instances, the shareholder proposal process offers investors a crucial medium of engagement and basis for dialogue with company management.⁴⁸

X Misconception: *Shareholder proposals tie up a company's precious time and resources that could otherwise be spent on increasing shareholder value, and don't provide any real tangible benefit to the company.*

- ✓ **Correction 1:** Most public companies do not receive *any* shareholder proposals.⁴⁹ On average, just 13% of Russell 3000 companies received a shareholder proposal in a recent 10-year span. In other words, the average Russell 3000 company can expect to receive a proposal once every 7.7 years. For companies that receive a proposal, the median number of proposals is one per year. Most of the cost of shareholder proposals involves attempts by management to exclude proposals from their proxy statements, which is a choice made by management.⁵⁰ The cost to put a proposal on the proxy ballot is de minimis.⁵¹
- ✓ **Correction 2:** Shareholder proposals are an efficient mechanism for a company to identify the material concerns of its investor base. Corporate disclosure and decision-making are driven by the concept of materiality. Information is 'material' "if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to vote, or to buy or sell a stock, or would view it as significantly altering the 'total mix' of information made available." Shareholder proposals are a critical vehicle to allow investors to express a collective voice on whether they view issues as important. Voting outcomes demonstrate a practical assessment of whether a significant number of the company's own shareholders view an issue as significant and therefore are an important tool for informing the corporation's materiality decision-making. For example, issues relating to risks of potential lawsuits, operational disruptions, climate risk, and ethical scandals that could negatively impact an individual company's profitability or the larger economic system that all shareholder returns depend on have all been topics of shareholder proposals.⁵²
- ✓ **Correction 3:** The shareholder proposal process has historically been an effective means for investment sentiment concerning new material risks to be brought to light.⁵³ For example, labor strikes in the entertainment industry in 2023 demonstrated that intellectual property infringement by artificial intelligence ("AI") can have a material financial impact on a company's operations.⁵⁴ Shareholder proposals during the 2024 proxy season filed at Netflix and Apple reflected these concerns regarding AI and proposed greater clarity on the use of AI and its board oversight, and the ethical principles guiding AI use, receiving 43%

⁴⁶ Shareholder Rights Group, ESG Proxy Voting and Shareholder Proposals Briefing Paper (accessed Sep. 5, 2024).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Council of Institutional Investors, CII Fact Sheet on Proxy Advisory Firms and Shareholder Proposals (Nov. 5, 2019).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Shareholder Rights Group, ESG Proxy Voting and Shareholder Proposals Briefing Paper (accessed Sep. 5, 2024).

⁵³ Shareholder Rights Group, ESG Proxy Voting and Shareholder Proposals Briefing Paper (accessed Sep. 5, 2024).

⁵⁴ S&P Global, "[Hollywood strikes highlight potential labor force turmoil over AI to come](#)" (Dec. 5, 2023).

and 37.5% of shareowner votes, respectively.⁵⁵ As an additional example, shareholders of banks attempted to elevate attention to the risks of predatory lending via shareholder proposals filed prior to the 2007-2008 banking crisis.⁵⁶ For example, in 2004, shareholders submitted a proposal at American International Group (“AIG”) requesting that the Board conduct a review to study ways of linking executive compensation to successfully addressing predatory lending practices.⁵⁷ By September 2008, it was on the brink of collapse, and over the course of the financial crisis received a total of \$182 billion in government bailout funds.⁵⁸

X Misconception: *Shareholders are uninformed compared to the knowledge and expertise of corporate management, and their ideas rarely add value to the company.*

✓ **Correction:** Many such governance policies that today are viewed widely as best practice were initially driven by shareholder proposals and then expanded to common adoption by markets. They include:

- Independent Directors and Board Diversity: Shareholder proposals have encouraged norms such as independent directors constituting a majority of the board, independent board leadership, board diversity, and annual elections for all directors. For example, in 2013, shareholders submitted; approximately 70 proposals requesting the adoption of a policy requiring that the company’s board chair be an independent director;
- Electing Directors by Majority Vote: Shareholder proposals have encouraged electing directors by majority vote, rather than by plurality – a radical idea a decade ago when shareholders pressed for it in proposals, and now the norm at 90% of large-cap U.S. companies. In 2011, Apple was one of 58 companies the California Public Employees’ Retirement System urged to adopt majority rather than plurality voting. The proposal had majority support from shareholders at Apple and many other companies;
- “Say-on-pay” vote requirements: now mandated by the Dodd-Frank Act – also resulted from shareholder proposals. “Say-on-pay” requires all public companies, subject to the proxy rules, to hold both Say-on-Pay and frequency votes at annual meetings. The Say-on-Pay vote asks investors to vote on the compensation of the top executives of the company – the CEO, the Chief Financial Officer, and at least three other most highly compensated executives (“named executive officers”); and
- Corporate Disclosures: Shareholder proposals have encouraged best practices in corporate disclosures on an array of material issues of critical interest to investors, including climate risk, boardroom diversity, and human rights risk in supply chains. For example, investors at companies such as American Express, Anthem, and T-Mobile have promoted transparency and accountability around workplace diversity and inclusion by successfully encouraging those companies to disclose their EEO-1 reports.⁵⁹

X Misconception: *Each shareholder proposal costs companies \$150,000 and costs the company’s shareholders even more than that in terms of their attention paid to the proposals.*

✓ **Correction:** The controversial \$150,000 figure represents an upper boundary of *possible* expenditures on proposals. The only mandatory cost associated with the shareholder

⁵⁵ Shareholder Rights Group, ESG Proxy Voting and Shareholder Proposals Briefing Paper (accessed Sep. 5, 2024).

⁵⁶ *Id.*

⁵⁷ EDGAR, [American Continental Group 2004 DEF14A Proxy Statement](#) (filed Apr. 5, 2004).

⁵⁸ Better Markets, [The Costs of the Wall Street-Caused Financial Collapse and Ongoing Economic Crisis](#) (accessed Sep. 6, 2024).

⁵⁹ *Id.*

proposal rule is for the issuer to publish a proposal limited to no more than 500 words in the proxy. All other costs related to the shareholder proposal process are at the discretion of management. Management's prudent attention and engagement to issues surfaced by proposals is more likely to be a net benefit to the corporation than a cost. Attention paid to proposals by investors is largely discretionary on their part; investors can choose to give greater attention and support to proposals that they deem to address significant concerns for their company and portfolios.⁶⁰

X Misconception: *The shareholder proposal process has been hijacked by “liberal” shareholder activists.*

✓ **Correction:** Shareholder proposals are filed by investors from diverse perspectives. All types of shareholders should have the freedom and rights embodied in the shareholder proposal process to make recommendations to management, and to have those recommendations considered by fellow shareholders. In fact, in recent years, conservative investors have increased the number of proposals that they have filed quite significantly, filing over 100 such proposals in the 2024 proxy season.⁶¹

X Misconception: *Proxy advisors are rife with conflicts of interest. For example, ISS, sells not only proxy voting services to investors but also consulting services to companies who are considering management-sponsored proposals, raising a potential concern that ISS may recommend that investors vote for management if it is a consulting client.*⁶²

✓ **Correction:** The SEC's 2020 proxy advisors rule, adopted during the Trump Administration, required proxy advisors to disclose material conflicts of interest (including of the type listed above) as well as the steps the proxy advisor has taken to address them.⁶³ Chair Gensler's 2022 amendments to the proxy advisor rule left that disclosure requirement in place.⁶⁴ The SEC has also told investment advisers they must evaluate their proxy advisor's conflicts policies and practices.⁶⁵

X Misconception: *Proxy advisory firm reports are rife with errors.*

✓ **Correction:** This claim was thoroughly explored and debunked as part of the 2020 SEC proxy advisor rulemaking. The SEC's Investor Advisory Committee demonstrated that figures used by the SEC in its proposal reflected that issuers only claimed proxy advice errors 0.3% of the time and that “none of those [were] shown to be material or to have affected the outcome of the related vote.”⁶⁶ In the words of a dissenting SEC Commissioner, proxy advisor inaccuracy “failed as a justification for the proposal because there simply was not evidence of any significant error rate in proxy voting advice.”⁶⁷ Both ISS and Glass Lewis have over a 99% accuracy rate. Proxy advisors' clients want accurate advice and proxy advisors compete to provide it. As the Council for Institutional Investors (CII) has pointed out, “[p]roxy advisors' business model depends on factual accuracy and their incentives are thus aligned with issuers and institutional investors alike.”⁶⁸

⁶⁰ Shareholder Rights Group, *ESG Proxy Voting and Shareholder Proposals Briefing Paper* (accessed Sep. 5, 2024).

⁶¹ *Id.*

⁶² Professor Alex Edmans, *Conflicts of Interest Among Proxy Advisors* (2023).

⁶³ *CFR* § 240.14a-2.

⁶⁴ Skadden, *SEC Rescinds Certain 2020 Amendments to Rules Governing Proxy Advisors* (July 14, 2022).

⁶⁵ SEC, *Release Nos. IA-5325; IC-33605* (Aug. 21, 2019).

⁶⁶ SEC, *Recommendation of the SEC Investor Advisory Committee (IAC) Relating to SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals* (Jan. 24, 2020).

⁶⁷ SEC, *Commissioner Allison Herren Lee: Paying More For Less: Higher Costs for Shareholders, Less Accountability for Management* (July 22, 2020).

⁶⁸ Harvard Law School Forum on Corporate Governance, *CII Letter to the SEC—Proxy Advisor Regulation* (Oct. 24, 2019).

X Misconception: *Proxy advisors have excessive influence and institutional investors merely “robovote” according to their recommendations.*

- **Correction:** Academic research and other studies have disproved this claim.⁶⁹ For example, a recent report commissioned by the UK FRC concluded: “our analysis of voting patterns and interviews with investors suggests that the nature and extent of [proxy advisor] influence may be more nuanced and less clearcut than is believed to be the case by many companies, stakeholders and other commentators.”⁷⁰ Moreover, claims of excessive proxy advisor influence often confuse correlation with causation. Many ballot items are uncontroversial; for the S&P 500, Glass Lewis’ Benchmark Policy supported 96% of all management proposals last year.⁷¹ It should not be surprising that proxy advisor clients often vote in line with recommendations on uncontroversial matters and that they have chosen to receive.
- **Correction:** In 2024, ISS recommended a vote with management on 96% of the proxy proposals. And those proposals received 96% of the vote. Almost all were recommendations to vote in favor of unopposed candidates for the board, approval of the auditors, and other routine matters.⁷²
- **Correction:** In 2024, for Russell 1000 companies, ISS recommended voting against just 12 percent of the proposals on executive pay. Fewer than one percent failed to receive a majority vote, and that number is lower than it was in 2023. The most outrageous pay plan in American history was the \$55.8 billion for Elon Musk at Telsa, approved twice by his board and thrown out twice by the Delaware Chancery court. Despite proxy advisory firm recommendations against this plan, however, it was overwhelmingly approved by more than 70 percent of the outside shareholders.⁷³

X Misconception: *Corporate management has the expertise to provide shareholders with the best information on how to vote on shareholder proposals; proxy advisors just muddy the waters and don’t provide helpful information.*

- **Correction:** As a neutral third party, proxy advisors help provide shareholders more comprehensive information than what corporate management may be willing to provide. They also help create a more informed shareholder voting base as most shareholders would not have the time or resources to independently research the relevant issues. As investor advocate Better Markets stated: “[...] [P]roxy advisory firms serve shareholders’ interest by providing them valuable information and facilitating their corporate engagement. Before proxy advisory firms became prominent, shareholders would typically follow ‘the Wall Street Rule,’ which was to either vote with management or sell their stock. Proxy advisory firms have leveled the playing field by increasing access to information and enabling timely and effective shareholder engagement. Proxy advisory firms are a market-based solution to a market-born problem: the volume and frequency of proxy statements make it economically inefficient for each institutional investor or investment adviser to conduct their own analysis and create their own voting platforms. The efficiencies gained are even more pronounced for small and medium-sized institutional investors who have

⁶⁹ Stephen Choi, Jill Fisch & Marcel Kahan, The Power of Proxy Advisors: Myth or Reality?, 59 Emory L. J. 869 (2010), available at: <https://scholarlycommons.law.emory.edu/elj/vol59/iss4/2>

⁷⁰ Financial Reporting Council, Analytical Report: The influence of proxy advisors and ESG rating agencies on the actions and reporting of FTSE350 companies and investor voting (2023).

⁷¹ This figure was provided by Glass Lewis to HFSC Democratic Staff.

⁷² Nell Minow, Written Testimony Submitted for House Financial Services Capital Markets Subcommittee Hearing on April 29, 2025.

⁷³ *Id.*

even fewer resources to conduct the required analysis to be able to satisfy their fiduciary duty toward their client, i.e., savers and retirees. [...] Ultimately, proxy advisory firms provide shareholders with independent advice and analysis that is not tainted or spun by the inherently biased management of a company. The recommendations that proxy advisory reports produce can improve corporate performance even when the recommended positions fail to win shareholder approval. Proxy advisory firms have empowered investors enough that management often seeks to defuse an issue in the interest of the shareholders before (or after) a shareholder vote. At a minimum, the enhanced shareholder engagement that proxy advisers facilitate often forces the management to better explain the rationale for its decisions.”⁷⁴

IV. Legislation

Republicans posted the following bills for this hearing:

- **H.R. ____, a bill to amend the Securities Exchange Act of 1934 to provide for the registration of proxy advisory firms [PDF].**
 - Summary: Among other things, this bill would require proxy advisors to file an application to register with the SEC, which the SEC would review and either grant or deny the registration (upon which the proxy advisor would have an opportunity to appeal). It would also require proxy advisors to have certain measures in place to prevent conflicts of interest as a condition for registration, as well as that they file an annual report with disclosures about their recommendations.
 - Additional Analysis: The SEC, in the first Trump Administration, proposed a shorter advance review period for companies. Investors overwhelmingly said it could not work with the compressed proxy voting time frame and that it would interfere with proxy advisor independence. The SEC, with a 3-1 Republican majority, decided not to adopt an advance review requirement. This bill would lengthen the “sneak peek” period and require proxy advisors to meet with companies and ombudsmen to get involved during this short period of time, which is unworkable. This timing delay also works at cross-purposes to the efforts to require institutional investors to do “independent review and analysis” of proxy advice or even an “economic analysis” before voting certain ways.
- **H.R. ____, a bill to amend the Securities Exchange Act of 1934 to provide for liability for certain failures to disclose material information or making of material misstatements [PDF].**
 - Summary: This bill would establish legal liability for proxy advisors that make material misstatements or fail to disclose material information in the annual reports required by the aforementioned bill.
- **H.R. ____, a bill to amend the Securities Exchange Act of 1934 to require certain disclosures by institutional investment managers in connection with proxy advisory firms [PDF].**
 - Summary: This bill would require institutional investment managers that use proxy advisors to issue annual reports about how they voted on shareholder proposals as well as how often they voted in line with the recommendations of their proxy advisors. It would

⁷⁴ Better Markets, [Comment re: Amendments to Exemptions From the Proxy Rules for Proxy Voting Advice](#), 86 Fed. Reg. 67,283 (Release Np. 34-93595; File No. S7-17-21) (Dec. 27, 2021).

also require larger institutional investment managers to conduct an economic cost-benefit analysis regarding each vote.

- Additional Analysis: It is unclear what exactly is expected for an economic cost, which in the administrative law context, typically take months.
- **H.R. ___, a bill to amend the Securities Exchange Act of 1934 to provide for certain requirements related to proxy voting [PDF].**
 - Summary: This bill directs the SEC to issue rules that would ban “robovoting”, which is the practice of automatically voting in a manner consistent with the recommendations of a proxy advisory firm.
 - Additional Analysis: Banning robovoting could have significant cost implications for large investors with diversified portfolios; this would be especially problematic if combined with aspects of other legislation that would greatly compress the time investors have to do the required independent review and analysis.
- **H.R. ___, a bill to amend the Securities Exchange Act of 1934 to require the Securities and Exchange Commission to study certain issues with respect to shareholder proposals, proxy advisory firms, and the proxy process [PDF].**
 - Summary: This bill directs the SEC to conduct studies every five years about proxy voting, shareholder proposals, and the proxy process, with a critical eye towards proxy advisors and shareholders receiving their advice.
- **H.R. ___, the Stopping Proxy Advisor Racketeering Act [PDF].**
 - Summary: This bill would, among other things, make it much harder for proxy advisory firms to offer consulting services (which are any services offered outside of their regular practice of making voting recommendations).

V. Suggested Questions

General Value and Function

1. **[Witness]**, can you briefly explain the core value that proxy advisory firms provide to institutional investors? What would be the practical impact on markets if these firms did not exist?
2. **[Witness]**, to what extent do institutional investors rely on proxy advisors when casting their votes? Are they using these recommendations as guidance or following them automatically?
3. **[Witness]**, how do proxy advisory firms influence corporate governance trends across the market? Do you believe they are contributing to improved governance? If so, can you provide some specific examples?

Transparency and Accountability

4. **[Witness]**, critics have raised concerns about the lack of transparency in how proxy advisory firms arrive at their recommendations. What steps could be taken to increase transparency without compromising proprietary methodologies?
5. **[Witness]**, do you believe proxy advisory firms should be required to disclose their data sources, analytical models, or track records of accuracy and outcomes over time? Why or why not?

Conflicts of Interest; Market Concentration and Competition

6. **[Witness]**, some proxy advisory firms provide both consulting services to companies and voting recommendations on shareholder proposals. Do you see this as a conflict of interest? Should there be regulatory separation between these functions?
7. **[Witness]**, the proxy advisory market is dominated by just a couple of firms. What are the implications of this concentration for competition, innovation, and quality of recommendations? Should Congress or regulators encourage more competition in this space?

Potential Reforms

8. **[Witness]**, are there specific reforms—either through legislation or SEC rulemaking—that you believe would strengthen the proxy advisory industry while preserving its independence and usefulness to shareholders?
9. **[Witness]**, should proxy advisory firms be subject to formal oversight or regulation similar to investment advisors or credit rating agencies? Why or why not?

Fiduciary responsibilities

10. **[Witness]**, most working people’s only interaction with financial markets is their hard-earned pensions and retirement savings. To fulfill their duty of protecting hard-working employees and their right to a secure retirement, do you believe fiduciaries must have the freedom to consider all material data, risks, and opportunities relevant to a portfolio?
11. **[Witness]**, is it true that a fiduciary’s main responsibility is to secure the strongest possible risk-adjusted returns for their beneficiaries?
12. **[Witness]**, if a company has significant assets exposed to physical risks—say, production facilities at risk of inundation from sea-level rise—would a fiduciary be within their duties to consider that risk?
 - a. Similarly, if a company derives much of its value from its human capital—say, a manufacturing firm in the auto industry—would a fiduciary be within their duties to consider labor relations as a potential risk?
13. **[Witness]**, last Congress we voted on a bill that would prohibit fiduciaries from consideration of environmental or social risks, even if they are material risks. Should Congress or any federal agency restrict fiduciaries from considering a material risk to a company’s financial or operational performance by obscuring that information from the market?

VI. Appendix: List of Select Shareholder Proposals Filed Over the Last Few Years

- *A proposal to require a report on the use of child labor in supply chains*
 - Shareholders of Tyson Foods Inc. requested that the board of directors commission an independent third-party audit regarding the company’s policies on preventing illegal child labor throughout its value chain.⁷⁵ Proponents asked for the following recommendations to be included in the audit: (1) an evaluation of Tyson policies and practices regarding, but

⁷⁵ Meat + Poultry, [Tyson shareholder proposal asks for new child labor audit](#) (Dec. 27, 2023).

not limited to, slaughter and processing facilities, third-party contractors, and suppliers linked to child labor violations; (2) a meaningful consultation with workers, suppliers, and other relevant stakeholders to inform appropriate solutions and ensure compliance with federal child labor requirements; and (3) a list of recommended actions and regular reporting with progress on the identified actions.⁷⁶

- *A proposal to require a company to conduct a health and safety audit regarding employee working conditions*
 - Investment fund Tulipshare Capital filed a shareholder proposal on behalf of Amazon employees requesting that Amazon’s board commission an independent audit and report of the working conditions and treatment that Amazon warehouse workers face, including the impact of its policies, management, performance metrics and targets.⁷⁷ Writing in support of this proposal, Tulipshare said, “Investigative reports allege a ‘mounting injury crisis at Amazon warehouses’, with [company] employees getting injured more frequently and severely than elsewhere in the industry.”⁷⁸ According to Tulipshare, an independent report is needed because the company’s reporting downplays the issue.⁷⁹
- *A proposal that would require a company to adopt living wage principles*
 - Shareholders filed a proposal that requests Walmart’s board and officers “exercise their discretion to establish company wage policies that are consistent with fiduciary duties and reasonably designed to provide workers with the minimum earnings necessary to meet a family’s basic needs, because company compensation practices that fail to provide a living wage are harmful to the economy and therefore to the returns of diversified shareholders.”⁸⁰ The supporting statement notes that Walmart increased the minimum hourly wage for its store associates to \$14 per hour in 2023, but adds, “[while] that is good progress, the living wage in 2022 was \$25.02 per hour per worker annually for a family of four.”⁸¹
- *A proposal requiring tech companies to provide a report on the risks that generative artificial intelligence poses, particularly with regards to mis- and dis-information.*
 - Shareholders of Meta, Alphabet, and Microsoft recently filed separate shareholder proposals that would require each company, in an annual report, to help identify the risks of generative AI technology to both the company and society, to develop means of mitigating these risks, and to demonstrate their effectiveness.⁸² In a statement, these shareholders said the report was necessary as “Generative AI poses a particular threat...because it makes it so easy to create and spread deceptive, yet believable content. False content threatens people’s ability to make informed decisions, a prerequisite for healthy democracies. More than two billion people will participate in more than 60 elections around the world this year, making access to reliable information about elections and the policy choices they embody essential to sustain and strengthen democracy.”

⁷⁶ *Id.*

⁷⁷ Governance Intelligence, [Amazon warehouse working conditions proposal gets significant backing](#) (May 29, 2024).

⁷⁸ Governance Intelligence, [Amazon warehouse working conditions proposal gets significant backing](#) (May 29, 2024).

⁷⁹ *Id.*

⁸⁰ Governance Intelligence, [Walmart faces vote on ‘living wage’ proposal](#) (Apr. 23, 2024).

⁸¹ *Id.*

⁸² OpenMic, [2024 Shareholder Resolutions on Generative AI & Disinformation: A Build-the-Vote Messaging Guide for Sustainable Investors](#) (Apr. 10, 2024).

- *A proposal requiring a company to report on the connection between drug pricing and excessive executive compensation*
 - 21% of shareholders of pharmaceutical company Abbvie voted in favor of a proposal that requires the drug maker to compile reports about the risks created by high prices and examine the extent to which pricing strategies propel executive compensation.⁸³ In a statement, the investors stated they “view executive pay packages as a window into the quality of board decision-making. In the context of drug pricing, [we] are eager to understand if companies are rewarding executives for short-term profit gains through drug price increases or rewarding longer-term investment in the company related to research and development and successful innovation.”⁸⁴ The vote followed similar proposals at Amgen, Biogen, Bristol-Myers Squibb, and Eli Lilly, and kicked off a new era of shareholder activism around excessive drug pricing.⁸⁵
- *Proposals to provide corporate accountability regarding the opioid crisis*
 - More than 500,000 people in the United States have died from overdoses involving opioids since the epidemic began.⁸⁶ No state has been spared; for example, in 2022, Tennessee ranked 6th worst in the nation for the number of opioid prescriptions per capita and 8th in terms of opioid deaths, according to the Centers for Disease Control and Prevention.⁸⁷ Since 2000, opioid overdose deaths have grown ten-fold in Michigan, and one in three families in Missouri have been affected by the opioid epidemic.⁸⁸ Shareholder engagement and shareholder proposals have played a very significant role in investors demanding that the pharmaceutical companies stop contributing to this crisis. The Investors for Opioid and Pharmaceutical Accountability (IOPA) was a diverse coalition of global institutional investors with 67 members representing over \$4.2 trillion in AUM.⁸⁹ It operated from 2017-2023 to engage opioid manufacturers, distributors and retail pharmacies to improve oversight structures that would reduce the risks of opioid misuse.⁹⁰ Through dialogues and more than 100 shareholder proposals at 32 companies, investor members made the clear business case for strengthened board-level oversight and other governance reforms to significantly reduce opioid-related risks.⁹¹ As a result of these investor efforts, 14 companies issued board reports assessing legal, financial and reputational risks related to its opioid business; 2 companies created a board level committee dedicated to opioid oversight; 5 companies agreed to governance reforms to increase transparency and strengthen independent oversight of management; 17 companies adopted robust misconduct clawback policies for executive compensation; and 4 companies adopted bonus

⁸³ Interfaith Center on Corporate Responsibility, [21% of Abbvie shareholders favor report on how drug pricing risks are integrated into executive incentive programs](#) (May 4, 2018).

⁸⁴ *Id.*

⁸⁵ Interfaith Center on Corporate Responsibility, [21% of Abbvie shareholders favor report on how drug pricing risks are integrated into executive incentive programs](#) (May 4, 2018).

⁸⁶ Center for Disease Control and Prevention, [Uncovering the Opioid Epidemic](#) (accessed Sep. 5, 2024).

⁸⁷ State Health Access Data Assistance Center, [The Opioid Epidemic in the United States](#) (accessed Sep. 5, 2024).

⁸⁸ *Id.*

⁸⁹ The Interfaith Center on Corporate Responsibility, Report on Opioid Accountability (accessed Sep. 5, 2024).

⁹⁰ *Id.*

⁹¹ *Id.*

deferral policies that allowed for more effective recoup of bonuses earned in the event of misconduct.⁹²

- *A proposal to address drinking water contamination due to corporate mismanagement*
 - Polyfluoroalkyl substances (“PFAS”), known as “forever chemicals,” have contaminated over 11,000 sites in Michigan, affecting the drinking water of nearly 2 million residents.⁹³ Exposure to these chemicals raises severe health concerns, including risks associated with cancer and immune system disruption.⁹⁴ PFAS exposure occurs principally through drinking water, but also occurs through products like food packaging.⁹⁵ There is a proposal pending in 2024 at Procter & Gamble to address the company’s risk management practices regarding the handling of PFAS in its business operations, particularly in the State of Michigan where Oversight and Investigations subcommittee Chair Huizenga’s district is based.⁹⁶
- *Proposals regarding concealment clauses*
 - Concealment clauses in employment contracts are widely known to suppress information about sexual harassment and other employment problems such as wage theft or discrimination. Proposals were filed in 2023 at four companies--Autodesk, CVS Health, Digital Realty Trust and Nordstrom--asking for a report assessing the potential risks associated with use of concealment clauses in the context of harassment, discrimination and other unlawful acts. Proponents withdrew all the resolutions after reaching agreements with the companies to review their use of concealment clauses.⁹⁷
- *A proposal regarding workplace harassment and discrimination*
 - In 2022, 63.3% of investors supported a proposal at Activision Blizzard requesting that the company report on harassment and discrimination prevention in the workplace. Previously, female employees of Activision Blizzard alleged “constant sexual harassment” and discrimination based on their gender, according to a lawsuit filed against the company by the California Department of Fair Employment and Housing.⁹⁸
- *A proposal involving gender pay gap*
 - In 2022, a proposal at Walt Disney requested that the company report on its median and adjusted pay gap across race and gender, and on the associated risks related to recruiting and retaining diverse talent. The proposal noted that Disney had released gender pay gap data for its UK employees pursuant to a UK-mandated disclosure showing a 12% median base pay gap and a 25% bonus gap. The proposal was supported by 59.1% of investors.⁹⁹

⁹² The Interfaith Center on Corporate Responsibility, Report on Opioid Accountability (accessed Sep. 5, 2024).

⁹³ Detroit Free Press, [EPA sets new clean drinking water standards for PFAS aimed at removing 'forever chemicals'](#) (Apr. 10, 2024).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ As You Sow, [Procter & Gamble CO: Disclosure of PFAS-Related Risk Management Practices](#) (Apr. 25, 2024).

⁹⁷ Shareholder Rights Group, ESG Proxy Voting and Shareholder Proposals Briefing Paper (accessed Sep. 5, 2024).

⁹⁸ *Id.*

⁹⁹ *Id.*

VII. Social Media Toolkit

Hearing Page URL: <https://tinyurl.com/649kcb62>

YouTube URL: <https://www.youtube.com/watch?v=iI1nqSvVzio>

- Trump inherited a booming economy—record-low unemployment, surging markets, and strong consumer confidence. Yet in less than 100 days, he managed to crash the markets, gut Americans retirement savings, and slam families with the largest tariff tax hike in a century.

This is not what America voted for. @USHouseFSC are sounding the alarm. 🗣️

- Is this Trump's so-called "Golden Era"? Because here's the reality:

- ❖ Stock market down 15%—\$10 trillion in household wealth gone
- ❖ Dollar down 11%—families' purchasing power reduced
- ❖ Business deals frozen—IPOs like Klarna, StubHub, and Chime on hold
- ❖ Americans delaying retirement plans they've spent decades building Under Trump, families are suffering—not prospering.

- The U.S. market is the envy of the world—yet Trump is undermining it at every turn. He's threatened to illegally fire Fed Chair Powell, promoted a fraudulent memecoin that wiped out

\$2B in investor savings while he and his family pocketed \$350M, and raised serious insider trading concerns with his tariff announcements.

- Republicans claim to care about strengthening our markets, but today they're attacking the proxy advisors that everyday investors—those without wealth or connections—rely on. Meanwhile, billionaires like Musk, Bezos, and Zuckerberg have Trump as their own personal proxy advisor. @USHouseFSC are fighting for transparency and accountability 🗣️:
- From day one, Trump has shamelessly used the White House to enrich himself, his family, and his billionaire buddies. Now, his latest tariff stunt is tied to serious evidence of insider trading — after his team reportedly leaked market-moving info to friends, donors, and even Members of Congress to cash in.

@USHouseFSC won't stand for this! 🗣️

- The Republican attack on proxy advisors is just one part of Trump's broader agenda to take from working-class families and give to billionaires. In fact, during tomorrow's markup Republicans will make the case for cutting money intended to keep our financial system stable and working-class families afloat, to make room for tax cuts for billionaires.
- In the face of reckless Trump Tariffs and a potential recession, now more than ever

investors need proxy advisors to keep our markets honest and shareholders informed.